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THESIS ON  
"THE POLITICAL SIGNIFICANCE  
of  
THE ALIEN AND SEDITION ACTS."

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## Political Significance of the Alien and Sedition Laws.

Development of democracy through the freedom of public expression as a background for the Alien and Sedition Laws.

### I. Growth of the freedom of the press in England.

#### A. Press under the Stuarts

##### 1. The control of licensers

#### B. Press under the Commonwealth

##### 1. Its use as a party instrument.

##### 2. The "Areopagética" by John Milton.

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##### 1. Expiration of the licensing act, 1695.

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##### 1. Modern newspaper

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###### (a) "Letters of Junius," and the resulting trial

##### 4. Struggle over the rights of juries in Libel cases

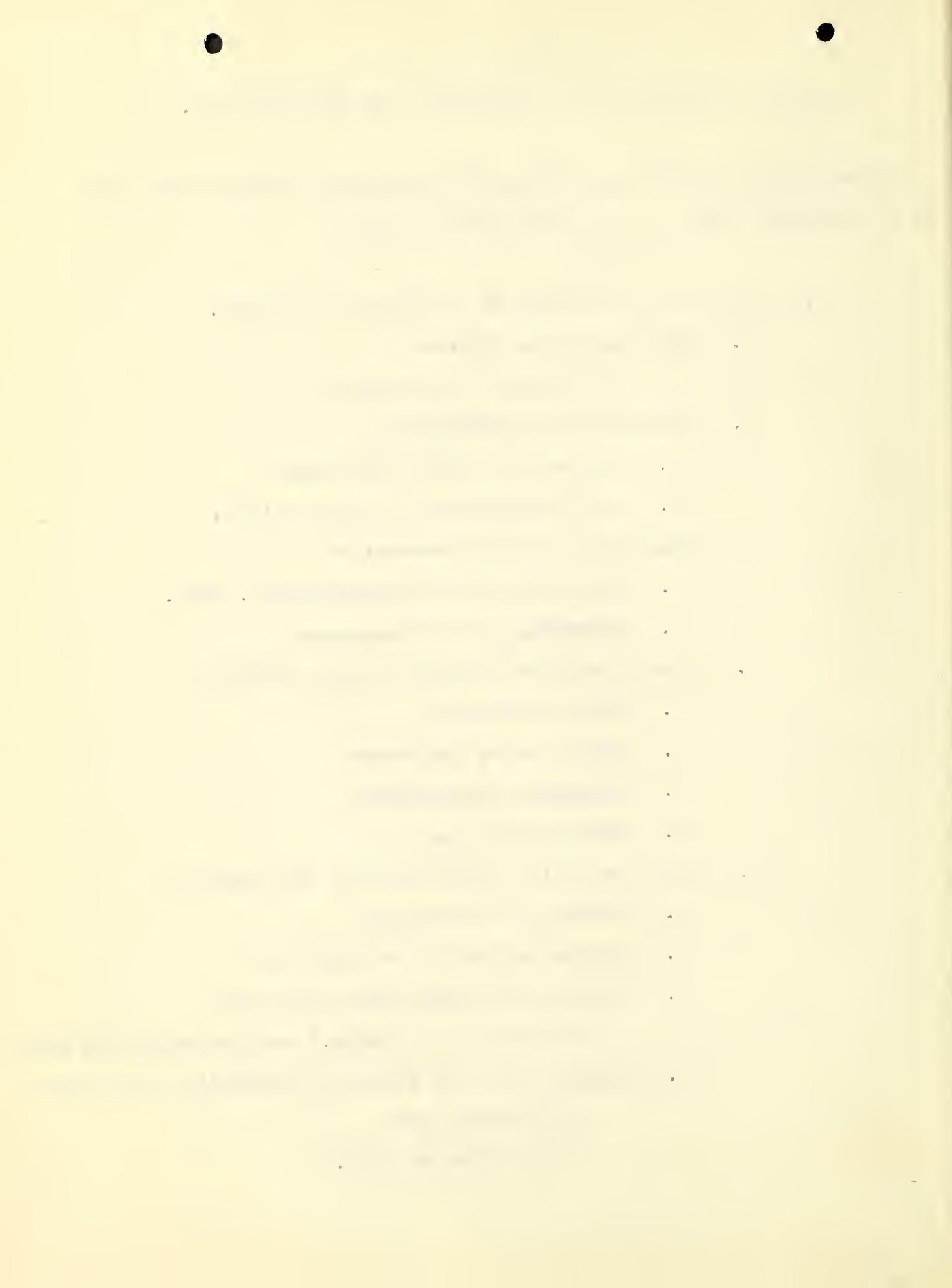
###### (a) Stockdale Case

###### (b) Libel Law of 1792.

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II. Growth of the freedom of the press in America

A. Before the Revolution

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The Political Background of the Alien and Sedition Laws.

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II. Quarrel with France

A. Effect of the European war on United States

B. Treaty of 1778 with France

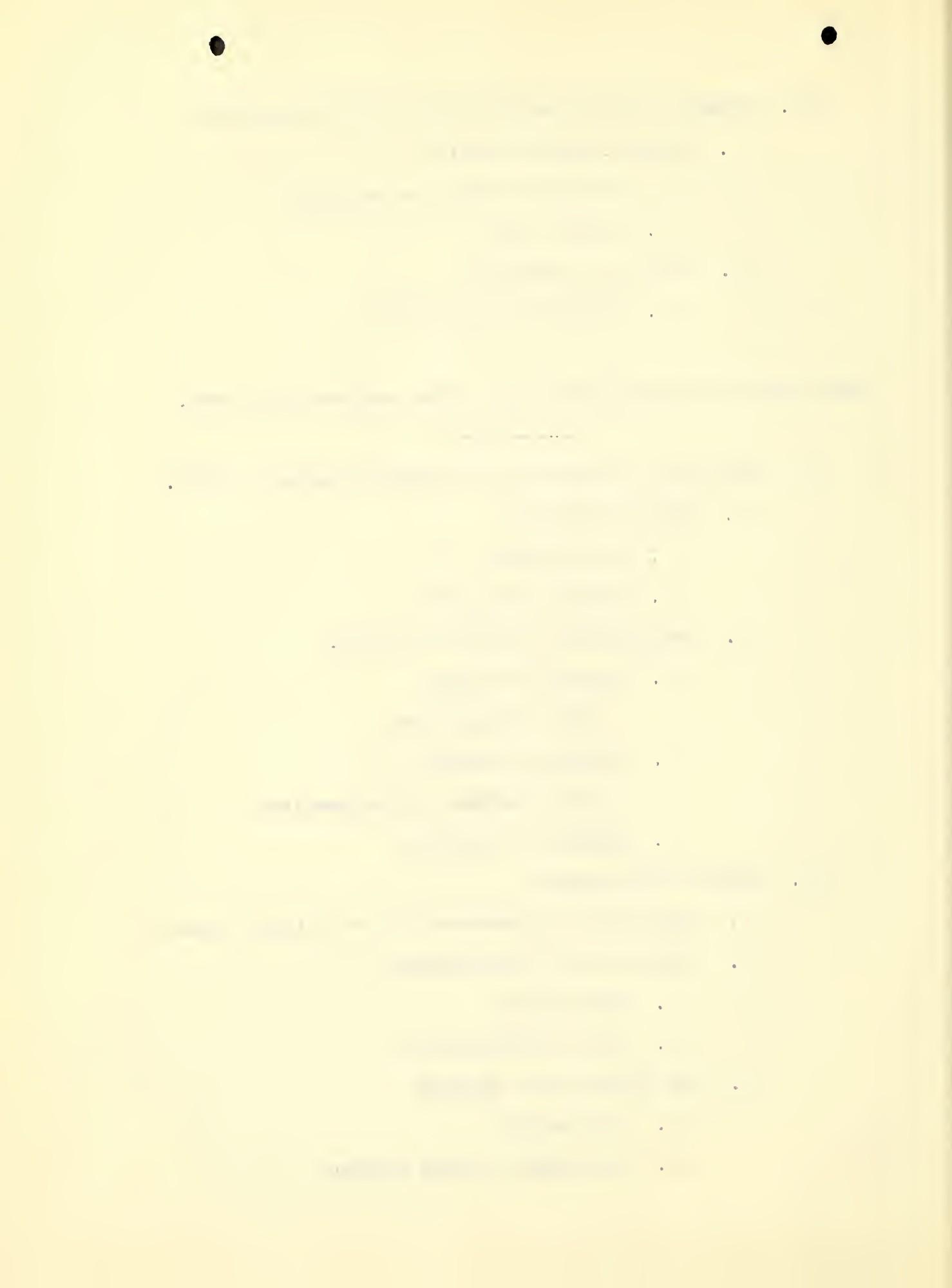
1. Its content

2. Its interpretation

C. Jay Treaty with England

1. Its content

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- D. Recall of Monroe
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#### Alien and Sedition Laws

- I. Content of the Laws
  - A. Naturalization Law
  - B. Alien Law
  - C. Sedition Law
- II. Alien Law
  - A. Objections made to it by the Republicans
    - 1. Alien Law denies trial by jury.
    - 2. The Law a violation of the first article and ninth section of the Constitution
    - 3. The Law is too severe.
  - B. Defense made by the Federalists
    - 1. Trial by jury not denied by the Law.
      - (a) Constitution not made for aliens.
      - (b) Removal of aliens not necessarily a



2. The Law is not unconstitutional

- (a) First article and ninth section of the Constitution applies only to slaves.
- (b) The prevention of emmigration is different from removal.
- (c) Federal government has authority to remove dangerous aliens.

III. Sedition Law

A. Objections made to it by the Republicans

- 1. Congress has no delegated power to pass the Sedition Law
- 2. Sedition Law violates the first amendment of the Constitution.
- 3. Operation of the Law is unjust
- 4. States are competent to handle libel cases
- 5. The Law is monarchial in its tendencies
- 6. The Law is contrary to the principles upon which the government was founded.
- 7. Minor objections

B. Defense made by the Federalists

- 1. Sedition Law rests on precedents
- 2. The Law does not violate the "liberty of the press"
  - (a) "Liberty of the press" misunderstood.
    - (1) Liberty means a right to publish without restraint.
    - (2) Liberty does not mean license
  - (b) Sedition Law makes nothing penal that was not so before the law was passed



(c) Sedition Law is not an "abridgment" of  
the "liberty of the press".

IV. Organization of sentiment by the Republican party.

A. By means of newspapers, pamphlets, and petitions

B. By means of the sympathy created by trials held  
under the Sedition Law.

C. By means of the Virginia and Kentucky Resolutions

V. Political revolution of 1800.

A. Part played by the Alien and Sedition Laws

1. Laws made the basis for a popular protest  
on constitutional grounds

2. Virginia and Kentucky Resolutions establish  
the Laws as a paramount issue in the campaign.

3. Trials held under the Laws keep the issue continu-  
ously before the people.

B. Other contributing political factors.

1. Lack of harmony within the Federalist party

2. An increasing desire for peace and economy

3. A growing feeling against England.



### Political Significance of the Alien and Sedition Acts

Although the discussion of the growth of the freedom of the press is only remotely related to the Alien and Sedition Acts in their political significance, it yet does bear a relationship which here warrants a more than mere casual discussion. It is out of this development of liberty of press and speech that came those principles upon which the constitutionality of the Alien and Sedition Acts could be challenged, thereby giving a legal strength to the forces organized to defeat the authors of the Acts. Final opposition to the party responsible for the Acts therefore had the sanction of constitutional arguments, and that made a very potent rallying cry.

Discussion of the growth of the freedom of the press in so far as it affects the United States must begin in England. England was one of the first countries to experiment with printing, and during the last quarter of the fifteenth century it was firmly established.

There appears to have been but little opposition to its growth at first, in fact it received every encouragement, and only when its educational and broadening influences became apparent was it hindered. The Crown and Church however saw in its educational and broadening influences a positive danger to security and conformity, respectively, if the press were not restrained. Because of this there arose that strict censorship of the Church over the press and the limiting of discussion through the government license.

Up to the Stuart period books, pamphlets, tracts, had been published, but the printing had been confined to London, Oxford, and Cambridge, and then under careful supervision. Patents and monopolies protected vested interests from attacks of too frank strangers. Under the Stuarts, however, the newspaper began to take form, "The Weekly



Newes" printed for Nicholas Bourne and Thomas Archer about the year 1622 is one, and the "English Mercury," 1588, in the British Museum was held to be another, but it has been proved false.

But in all these attempts there was nothing like freedom of the press. The licenser, supported by the Courts, especially the Court of the Star Chamber, was too powerful. In spite of this, however, there were certain indications of progress. Sufficient ground had been gained to warrant a firm insistence in the Stuart period that free speech was a "right" and not a granted privilege, within Parliament; and the principle was bound to extend to other fields. And again, there was growing a sentiment against the limitations of the licensing system. This was apparent in 1649 when Gilbert Mabbott resigned the office of licenser because he believed it lawful to publish anything without a license provided the author's and printer's names were attached. This was a certain indication that the time was coming when the government could no longer restrict by means of the license, but would be compelled to use the courts and prosecute as libellous any objectionable writings.

The latter half of the seventeenth century, including the Commonwealth, and the period soon after the Restoration, brought changes that affected the position of the press in two ways. In the first place the last of the licensing laws was allowed to expire in 1695. Long Parliament had continued the policy of the royal government in this respect, only to call forth that eloquent plea for the liberty of unlicensed printing, Milton's "Areopagetica." The great weapon of royal authority, the Court of the Star Chamber, was abolished in February, 1641. Thus the struggle for a free and uncontrolled press was to be shifted to the court room, where the law of libel was to be contested.

In the second place a new variety of publications began to appear.



Tracts and newspapers entered into the struggle between Court and Parliament. Between 1640 and 1660 about 30,000 political papers and pamphlets were issued. The press had become a party instrument, and Parliament did not hesitate to show its intolerance and partizan character when it passed severe orders that royalist and prelatrical writers might be held in check.

During the first half of the eighteenth century the growth of the press followed lines laid down during the previous period. The two significant features, however, which clearly show its position are these; first its rapid growth as a party instrument, and second the methods of control employed by the government.

In an age crowded by literary men of the first rank, with such men writing as: Newton, Pope, Swift, Addison, Steele, Defoe, Prior, it is nevertheless true that none were exempt from a political bias and were often too willing to employ their talents in aid of politics. Thus Swift, Bolingbroke, Atterbury, and Prior were numbered among the Tories, while the Whigs claimed Addison, Steele, and Defoe. The party in power did much to encourage political writing by giving rewards; thus Frenchard, author of Cato's Letters, was given the post of "commissioner of wine-licenses" by Walpole, and Mr. Concannon, a ministerial writer, was made Attorney-General of Jamaica by New-castle. Swift had his "Examiner"; Defoe, the "Review;" Leslie, the "Rehearsals;" while the "Postman", "Flying Post," "English Post" and many others indicate the increased (1) interest in political literature.

The literature was surely becoming a party weapon of much power and widening influence can be further seen by such instances as these:

(1) England in the XVIIIth Century-- Lecky. Vol. I. p.66.



the "True-born Englishman" of Defoe, 1700-1701 which was written to check agitation against William as a foreigner, had nine editions in four years, and was printed twelve times during the same period without the concurrence of the author, while no less than 80,000 cheap editions were disposed of in the streets of London. A forgotten Whig pamphlet by Benson, published as an answer to the Tory addresses to the Queen after the impeachment of Sacheverell were sold to the number of 60,000.

(1) Swift's "Conduct of the Allies" to prepare the country for the Peace of Utrecht amounted to 11,000 copies in a single month. The "Spectator" had a daily circulation of 14,000; the "Craftsman," which contributed so much to the downfall of Walpole, had a circulation of 10,000.

(2) Instances, such as the above, could be multiplied giving every evidence of the great use made of the press by political parties, and likewise of the eagerness of the people for such news. This has so much of the modern aspect in it that one might well date the major features of the modern newspaper from this period. But it means vastly more, because through these very features were to come the educational value of the free and unrestricted newspaper, and the ushering in of that period when a government would need neither licenser nor libel law for protection but simply a well informed public opinion. Mr. Danvers spoke as prophet as well when he said in 1738, "The people of Great Britain are governed by a power that never was heard of as a supreme authority in any age or country before ----- It is the government of the Press."

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(1) England in the XVIIIth Century--Lecky. Vol. I. p 66.

(2) " " " " " " " " I. p 66.

(3) " " " " " " " " I. p 561 (Quoted by Lecky.)



The second feature which marks the development of the press during the first half of eighteenth centure is the attitude of the government toward its growth. In the preceding period it was observed that the control of the press through the licenser had lapsed, and that the struggle could be shifted to but one place, and that was to the courts. The whole of the eighteenth centure becomes therefore a legal contest between the press on the one hand and the government on the other, with an ultimate victory for the press.

Now the first half of this century is marked by no great legal struggles, in fact the use of the press as a party instrument probably retarded the recognition of its freedom. Parties took up the warfare where the Kings had left off, and were quite as relentless, though perhaps less brutal. Opposition writers could expect no mercy, and Parliament usually had "a sermon to condemn or a parson to roast", or a member to expel. Sometimes rivalry was expressed in coarser ways; a Mr. Dyer was beaten in a coffee-house by Lord Mohun, and Tutchin, who had braved Commons and Attorney-General was actually beaten to death in the streets. But in spite of this apparent severity one cannot help but feel that it was on the whole quite harmless. The possibilities of the press were becoming clearer, and many saw that often an objectionable press could be more easily curbed by employing writers to uphold the opposite side  
(1) than through the process of the law.

That the characteristics of the press during this period should have been such as above outlined is quite to be expected when the period is viewed from the political angle. Politically the first half of the eighteenth century was one of transition. That great feature of Eng-

(1) Constitutional History of England--May. Vol. II. P. 107.

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lish government--the Cabinet--was in the making; and party feeling was always a very definite thing to be reckoned with.

The Whig and Torie parties were in contrast both as to make up and principles. The Tory party included the landed gentry and supporters of the established church, while the Whig party drew its members from the commercial and the nonconformist classes--the former was naturally conservative, and the latter, liberal.

The law making a property qualification essential to membership in Parliament was a Tory measure, opposed by the Whigs. Likewise the occasional Conformity Act and Schism Act (both acts directed against Dissenters) were Tory measures, later repealed during the Whig ascendancy.

Along these same lines the Whigs and Tories were divided on the press. The Tories, especially in time of Pitt and Castlereagh were jealous of its powers, and did not hesitate to punish it with severity. The Tory ministry of Anne by the passage of a Stamp Act in 1712 attempted to repress licentiousness by imposing a stamp tax on newspapers and advertisements. This was aimed to limit the circulation of cheap papers, and continued in varied forms till our own time. But the Whigs were very tolerant of press criticisms. This was no doubt due in a large measure to Walpole, who was the dominating figure in Whig policies for the most part of this period. Walpole was liberal, good natured, no great reader, and not sensitive, and the press under him enjoyed practical freedom, except when the Jacobitical writers became too rampant.

The press had thus assumed during the first part of eighteenth century much of its present character; its full freedom was still, however, to be defined and incorporated into the law. The next period saw that accomplished.

the first time I have seen a specimen of the genus. It is a small tree, 10-12 m. high, with a trunk 10-12 cm. in diameter. The leaves are opposite, elliptic-lanceolate, 15-20 cm. long, 5-7 cm. wide, acute at the apex, obtuse at the base, entire, glabrous, dark green above, pale green below. The flowers are numerous, white, 5-petaled, 10 mm. in diameter,生于葉腋，或生于葉之先端。花期在夏秋之交。果實球形，直徑約10 mm.，熟時紅色，味酸，可食。種子圓形，直徑約5 mm.，有白毛。根系發達，主根粗大，側根多而長。

The latter half of the eighteen century is therefore mainly one of litigation, during which the press emerges fully and freely recognized as the proper means for public discussion, instruction, and criticism. Political discussions up to this period had been mainly conducted in tracts and pamphlets, and although the political element may be found in newspapers as far back as the Revolution, and often during reign of Anne it yet is true that only during George III's reign did the newspaper fully accept the responsibility of political discussion. This transition from pamphlet to paper is rather interesting. Walpole noticed that political news was often confined to Saturday issues, and Johnson published his "Idler" every Saturday in a newspaper. Gradually more attention was given to such topics, and by 1768 daily and evening editions were printing political topics. With this change it was natural that reporters and printers should be brought into closer relations with the State, and the position of the newspaper was certain to be elevated thereby. It is in this period that the newspaper rose above party warfare, and becomes a great popular power--the representatives, as well as the critic, judge and moulder of public opinion. That the press admirably accepted this responsibility, and has fully met the requirements of this widened sphere is without question. From this period date the great modern papers: "Morning Chronicle," 1770 (extinct after 1862); "Morning Post," 1772; "Morning Herald," 1780; "Times," 1788 (still un-  
(1) disputedly the first newspaper of the world).

It was probably inevitable that the newspaper should thus come to its own; its opportunities were clearly manifest, and increasing circulations necessitated an increase of its functions, and a recognition of its place and influence. In spite of the stamp duty of 1712, and its

(1) England in the XVIIIth Century--Lecky. Vol. III p. 277.

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increase in 1776, by Lord North, from 1 penny to 1 1/2 pence the press continued to grow. The following statistics afford some idea of this growth: in 1753, the government issued 7,411, 757 stamps; in 1760, 9,464,790; in 1774, 12,300,000. These facts further attest to the increasing press activity: in 1777 there were 17 papers in London, 7 of which were daily; between 1769 and 1771 seven new magazines were published in England; and in 1778 appeared the first Sunday paper, Johnson's (2) "Sunday Monitor."

But, as previously stated, this growth was assured only through struggles in the courts. The position of a free and unhampered press was not firmly established till the end of the eighteenth century. If the press were confronted by the licenser, created monopolies, and Star Chamber practices during latter half of seventeenth century, was made subservient to party influence during first half of eighteenth, and in both periods it had successfully resisted unprogressive influences, and had continued to expand, it is quite apparent that the only restriction to its complete usefulness lay in the application of the law of libel. The last few paragraphs have attempted to show the rise of the newspaper from a party organ with its narrow and prejudiced influences to a position of national power and dignity--the representative not of factional, but of popular opinion. The next few paragraphs will be devoted to a discussion of the doctrine of libel as applied in several important cases--struggles which finally established the liberty of the press by the Libel Law of 1792.

The legal position of newspapers at this time was doubtful. The House of Commons excepted libel among those offenses covered by Parliamentary privilege, and there was a very positive desire on the gov-

(2) England in the XVIIIth Century--Lecky. Vol. III p. 248 & 278.



ernment's part to so withdraw press cases that a review by juries would be harmless. And thus by "ex-officio" informations the Attorney-General was able to send press cases to trial without the assent of the grand jury. The trials were then held before judges who laid down a doctrine on libels which transferred the decision from the juries to themselves. According to Walpole it would appear that these "ex-officio" informations were much used at this time, for about 1763 he states that some two hundred were filed, a number greater than the prosecutions of the previous thirty-three years. But in 1791 the Attorney-General stated that during the last thirty-one years there had been seventy prosecutions for libel; fifty convictions; twelve received severe sentences; and in five cases the pillory was part of the punishment; so that it seems probable that many cases included in Walpole's statement must have been abandoned.

The libel doctrine, however, involved a legal question. In a libel case there were two considerations; one of fact for the jury, and one of law for the judge. The former limited the jury to a consideration of the meaning of the clauses of the libel, and whether or not the indicted person actually wrote the same. The question of law involved the decision as to the character of the document; was it a libel, or was it not. In a majority of cases the latter question was, of course, the real subject of dispute, and thus the decision was really removed from the jury-box to the Bench. Twelve men were called upon to consider whether a man was guilty of the publication of a libel, and yet at the same time they could not judge whether the publication was actually a libel or whether its publication involved guilt. The jury was forbidden to look at intentions, and yet as Junius writes: "in other criminal prosecutions, the malice of the design is confessedly as much a subject of con-

the first time in the history of the world, the whole of the human race has been gathered together in one place, and that is the city of Rome.

Now, if you will look at the map of Italy, you will see that Rome is situated in the middle of the country, and that it is surrounded by mountains on all sides. This makes it a very safe place to live in, because it is difficult for enemies to get into the city.

But Rome is not only a safe place, it is also a very beautiful city. The streets are wide and clean, and there are many fine buildings and monuments. One of the most famous buildings in Rome is the Colosseum, which is a large amphitheater where people used to go to see gladiators fight.

Another important building in Rome is the Pantheon, which is a large circular temple that was built a long time ago. It has a hole in the top through which light comes in, and it is said that the sun's rays pass through this hole every day.

Rome is also known for its delicious food. There are many different types of pizzas and pastas that are made there, and they are very tasty. The people of Rome are very friendly and welcoming, and they are always happy to welcome tourists to their city.

In conclusion, Rome is a wonderful city that has something for everyone. Whether you are interested in history, culture, or just want to have a good time, Rome is the place to go.

sideration to a jury as the certainty of the fact."

This doctrine was defended by Lord Mansfield, and was likewise supported by a long succession of eminent lawyers. Holt, one of the greatest of constitutional judges, and Sir Philip Yorke (Lord Hardwicke), who was active in the prosecutions against the "Craftsman" under George II, and Chief Justice Raymond all asserted this interpretation of the libel law. The one great authority who believed that the decision of the whole question rested with the jury was Lord Camden.

Among the cases which might be selected to show the contradictory view on the libel doctrine there are none better known or clearer than the case against the "North Briton"; the prosecution against the Junius letters; the prosecution against the printers Woodfall, Miller and others in 1771; and the trial of Stockdale. These cases not only illustrate the doctrine of libel, but they mark the character of the progress which the press made toward freedom during this period, for the "North Briton" was one of the boldest papers and did not veil its sarcasms by assumed names; the prosecution of the Junius letters revealed the difficulty of convicting those held on libel charges; the case against the printers established the security of Parliamentary reporting; and the trial of Stockdale paved the way for the Libel Bill by practically establishing the lawfulness of full and free discussion of government affairs.

To go into the details of these four cases would be a digression hardly justified by the extent of this account, but a brief summary of two may not be out of place. The trial connected with the publication of the "Letters of Junius" is typical, showing at the same time the application of the Libel Law and the spirit of the opposition to it. The first letter under the signature of Junius appeared on Nov. 21, 1768,

(1) England in the XVIIIth Century--Lecky. Vol. III. p. 249.



and from then on there appeared letters of an increasingly bold character. The letters were published in the "Public Advertiser," and attracted very wide attention. This was due mainly to two reasons; first, because of the very attractive style in which they were written. For condensed invective and forceful outspoken utterance they can hardly be surpassed in English literature. Sharp sarcasm, statements both clear and vivid, well chosen epigrams, finely constructed metaphors, and often passages of imaginative beauty are found throughout the letters. The writer had the gift of saying things that are easily remembered and quotable--a brilliant and striking style--which perfectly adapted his writings to the purposes for which they were intended.

But if they commanded admiration because of their literary qualities, there was a more potent reason to be found in the critical condition of the period which they exposed. In America there was a growing discontent; Corsica had been seized by the French, Spain refused to pay the Manila ransom, and the English had been expelled from the Falkland Islands. These were humiliating conditions, indicating government inefficiency, and a policy fatal to imperial greatness. At home the encroachments on the rights of electors had raised indigration nearly to revolution, Parliament and the law courts were discredited, ministers were strong only in purchased majorities, and divided among themselves, while the sovereign had lost his popularity. These conditions were fatal to constitutional liberty. For opposition there remained only the press and the jury-box. Thus the letters of Junius came at a most critical time.

Excitement culminated in the letter to the King of Dec. 19, 1769. Woodfall had published it, and Alamon and Miller had reprinted it, and they were accordingly prosecuted by the Attorney-General. The trial of



Alamon came first, and the jury finding him guilty, he was sentenced to pay a fine of ten marks, and to give security for his good behavior during two years. Woodfall was next arraigned, and Mansfield argued his position on the doctrine of libel, which position has previously been stated. The jury responded by a verdict of "guilty of printing and publishing only." After a long discussion the verdict was set aside, and a new trial was ordered. Meanwhile Miller was acquitted, and the temper of the London juries was such that no attempt was made to renew the prosecution of Woodfall. It was evident that public sentiment was supporting the press, and the Annual Register of 1771 declared that "a London jury would hardly bring in a verdict against political libellers."<sup>(1)</sup>

The verdict in the Stockdale trial, 1789, established the important doctrine that full and free discussion was lawful, and points naturally to the culmination of this period of controversy over the Libel Law. Stockdale was indicted by the Attorney-General, at the instance of the House of Commons, for publishing a defense of Warren Hastings, written by Rev. Mr. Logan. It was charged that the pamphlet was a seditious libel, intending to vilify the House of Commons as corrupt and unjust during the impeachment. Mr. Erskine, who defended the case, maintained that the defendant was not to be judged by any isolated passages put together in the information, but by the entire context--its general character and object. He further maintained that the question was one which "cannot, in commonsense, be anything resembling a question of law, but is a pure question of fact." Lord Kenyon who tried the case did not deny this doctrine, and the jury returned the verdict of "not guilty."<sup>(2)</sup>

One may well now ask: "What was the result and effect of these

(1) England in the XVIIIth Century--Lecky. Vol. III. p. 266  
(2) Constitutional History of England--May. " II. p. 119.



trials?" There were several, which space will permit only to mention. First, there developed a fear and distrust of the doctrine of libel as stated by Mansfield. Its dangers were quite apparent, and the public, consequently, was only too ready to sympathize with those who opposed it. Secondly, there was a wholesome belief that the rights of juries were rights not to be restricted or lightly considered. Thirdly, both within Parliament, and outside, men were expressing their ideas freely. The freedom of the press was before the public, and in a very favorable position. Lord Rockingham wrote to Dowdeswell, who had called for the introduction of a bill into Parliament to settle doubts concerning rights of jurors in libel cases: "he who would really assist in re-establishing and confirming the right in juries to judge of both law and fact, would (1) be the best friend to posterity."

The natural outcome of such a feeling was the Libel Bill of 1792. Fox, who formerly upheld the Mansfield doctrine, had now faced about, and the opinion within the House of Commons had so changed that when it was suggested in 1791 that a bill be brought in to declare the law there was scarcely any opposition. Mr. Fox accordingly brought in such a bill supported by the Attorney-General and Mr. Pitt, and Lord Camden. It passed the Commons, but was held up in the Lords by Lord Thurlow because of the lateness of the session and the importance of the bill.

The following session, 1792, the bill passed Commons unanimously, and supported by Lord Camden was pushed through the Lords, but against a protest signed by Lord Thurlow, and five other Lords.

In form the Libel Law was declaratory, and in effect it was a reversal of the decision of judges by the High Court of Parliament. It

(1) Constitutional History of England--May. Vol. II. p. 118.



maintained the rights of juries, and secured the subject a fair trial by his peers, but there was introduced no uncertainty into the law, nor any dangerous indulgence. It served to remove the jealousy which existed between the jury and the bench, and there resulted a better protection from attack than heretofore.

An extensive account of the development of the English press has been given because in a very great degree the American press was involved. This was certainly the case until America ceased to be a colony, and even after that time America was still largely influenced by English customs, ideas, and precedents. With this in mind the survey of the growth of the freedom of the press in America may be made briefly.

During the first half of the eighteenth century Boston was the press center of the colonies. The "News Letter" appeared in April 1704, and by 1735 there were five newspapers published. The first printing press was brought to Massachusetts in 1638 because of the attacks made by Archbishop Laud against the Puritan press in England. This press was directed by Haward. In 1665 a private printing office was opened, and in 1674 printing was permitted in Boston, but the General Court had established a board of censors to keep the publications within limits. The overthrowal of the Massachusetts Bay Company placed the control of printing into the hands of the crown. The instructions to Gov. Andros of New England are typical of those sent to other Governors, and were as follows regarding printing: "for as much as great inconveniences may arise by the liberty of printing within our said territory under your government, you are to provide by all necessary orders that no person keep any printing presses for printing, nor that any book, pamphlet, or other matters whatsoever be printed without your especial



leave and license first obtained." Commissions to this effect were dropped after about 1730, and up to this time they were little heeded, for the colonial assemblies refused to attach any penalty to the dis-  
(1)  
obedience of the Governor in this respect.

In 1721 Gov. Shute of Massachusetts asked for penal legislation against authors of seditious papers, but the House of Representatives refused, and resolved instead that "to suffer no books to be printed without a license from the Governor will be attended with unnumerable inconveniences and danger."

The relationship between the Governor, as the representative of royal authority, and the colonial assemblies was that of a constant struggle. The question of provincial administration and rights was always in agitation.

There were held two general principles which affected this relationship; one as to the application of common law, and the other as to statute law. Richard West, special counsel to the Board of Trade in 1720 declared that the common law of England was the common law of the plantations: "let an Englishman go where he will, he carries as much of law and liberty with him as the nature of things will bear," he declared. Attorney-General Yorke in 1729 when dealing with the application of the Statute Law in Maryland stated that general statutes enacted by Parliament since the settlement of the province (Maryland), and not expressly applied to that colony, or to colonies in general were not applicable there, unless declared so by act of assembly or "received there by long uninterrupted usage or practice." This remained a disputed question. Thus the colonies received the familiar safeguards granted in common law such as: personal liberty, right of property, trial by jury; but religious liberty and the right of free criticism of public men and measures were

(1) History of United States--Channing. Vol. II. p. 477.

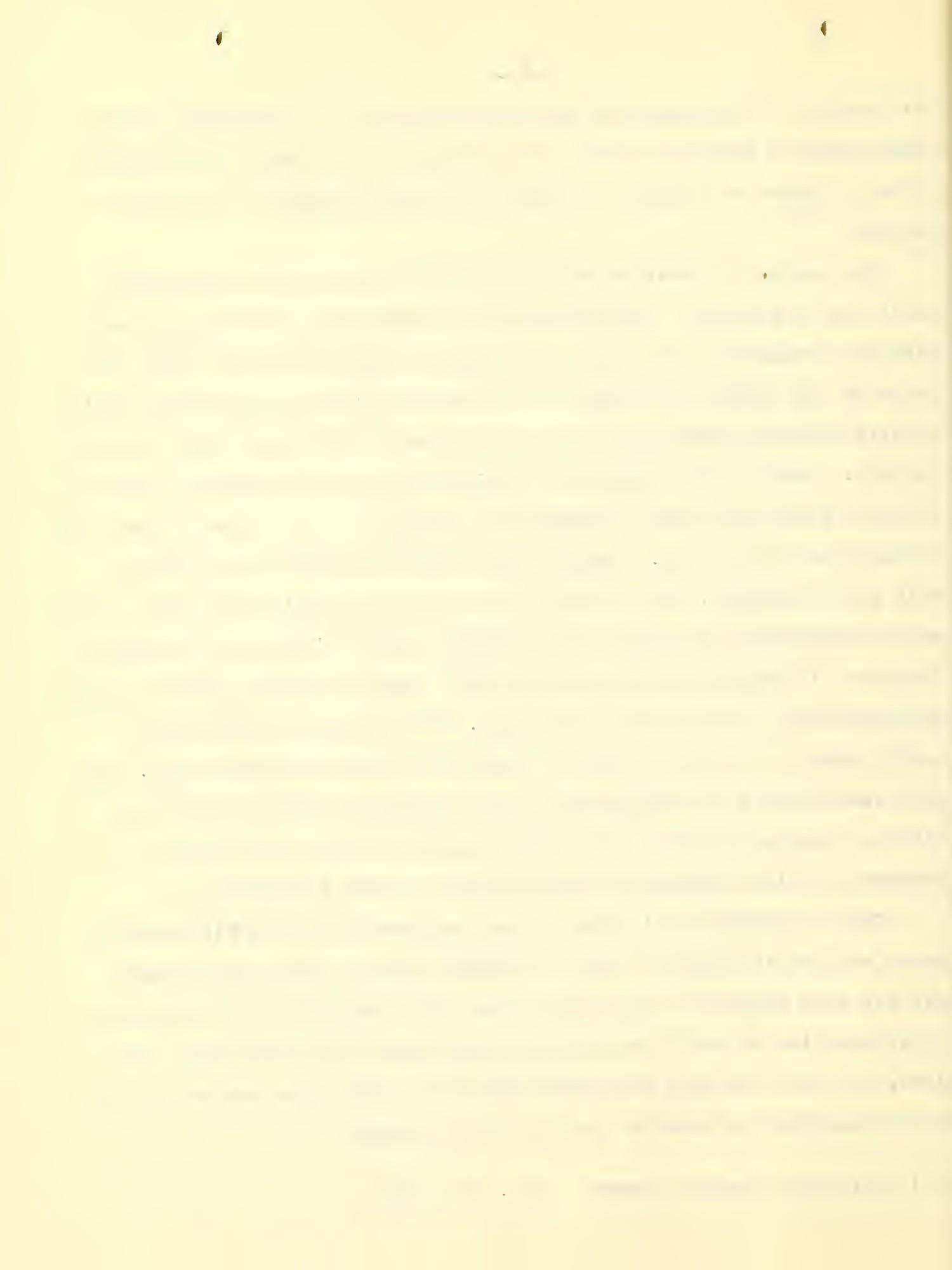


not secured. The eighteenth century in America is a duplicate of the same period in England as far as the freedom of the press is concerned. It was a period of litigation during which the doctrine of libel was  
(1)  
settled.

The contest in America could not become as acute or spectacular as it did in England. The freedom of the press was gained sooner and with less commotion over here for perhaps two main reasons. First because of the temper and spirit of the colonial people--a condition which greatly fostered democracy, and which in turn England was quite unable to control. Secondly the comparative unimportance of the American press before the Revolution which rendered its progress of less moment than that of the press in England. By 1750 there were newspapers published in only seven colonies, and by 1775 there were only thirty-four with a total weekly circulation of about five thousand copies. These were generally imperfect in reports, giving considerable space to English news of court and Parliament, literature, and essays. The editorial section had hardly come to its own. Added to this was a scattered population, with poor facilities for communication, and interested first in getting a living. The town-meeting, and public assembly were ready means of protest, but the newspaper as yet had but a limited importance.

Thus it happens that press liberty was really gained fifty-seven years earlier in America than in England, and its whole development was far less complex. The classic case which established the American interpretation of the libel law was that concerning Peter Zenger in 1725, for here the jury broke away from the established custom of England regarding the power of juries in libel cases.

(1) Provincial America--Greene pp. 201 & 202.



Zenger published the "Weekly Journal" in New York. The Governor of the colony, Mr. Cosby had removed Mr. Lewis Morris, the chief justice, because a case which involved the Governor's salary had been decided against him. Zenger used the columns of his paper to publish a sharp criticism of the Governor's action. Libel charges were brought against Zenger, and the case was brought up before the new chief justice, DeLancey. DeLancey maintained, consistent with the English opinion of that time, that the jury could only decide on the fact of publication, and simply accept the decision of the court as to the libellous character of the statements made. This would of a certainty have convicted Zenger, for DeLancey was already prejudiced against him. The lawyer for the defense was Andrew Hamilton of Pennsylvania. He argued that the jury must decide whether the publication was a false and malicious libel; for public criticism, he maintained, was the only safeguard of a free government. He maintained that the question was not the cause of a poor printer, nor of New York alone; but the cause of liberty--"the liberty of opposing arbitrary power by speaking and writing truth."  
(1)Zenger was acquitted, and America established the principle in 1735 which England did not secure till 1792. Gouverneur Morris said of this trial that it was "the morning star of that liberty which subsequently revolutionized America".(1) It did make possible the quicker development of the newspaper as a vehicle of instruction on constitutional matters, and on questions between the colonies and England. Discussions of assemblies, town-meetings, committees were more readily published, and separation from England was possibly brought about sooner because of the enlarged opportunities for the press to keep alive and give direction

(1) History of the United States - Channing Vol.II pp 487-488.

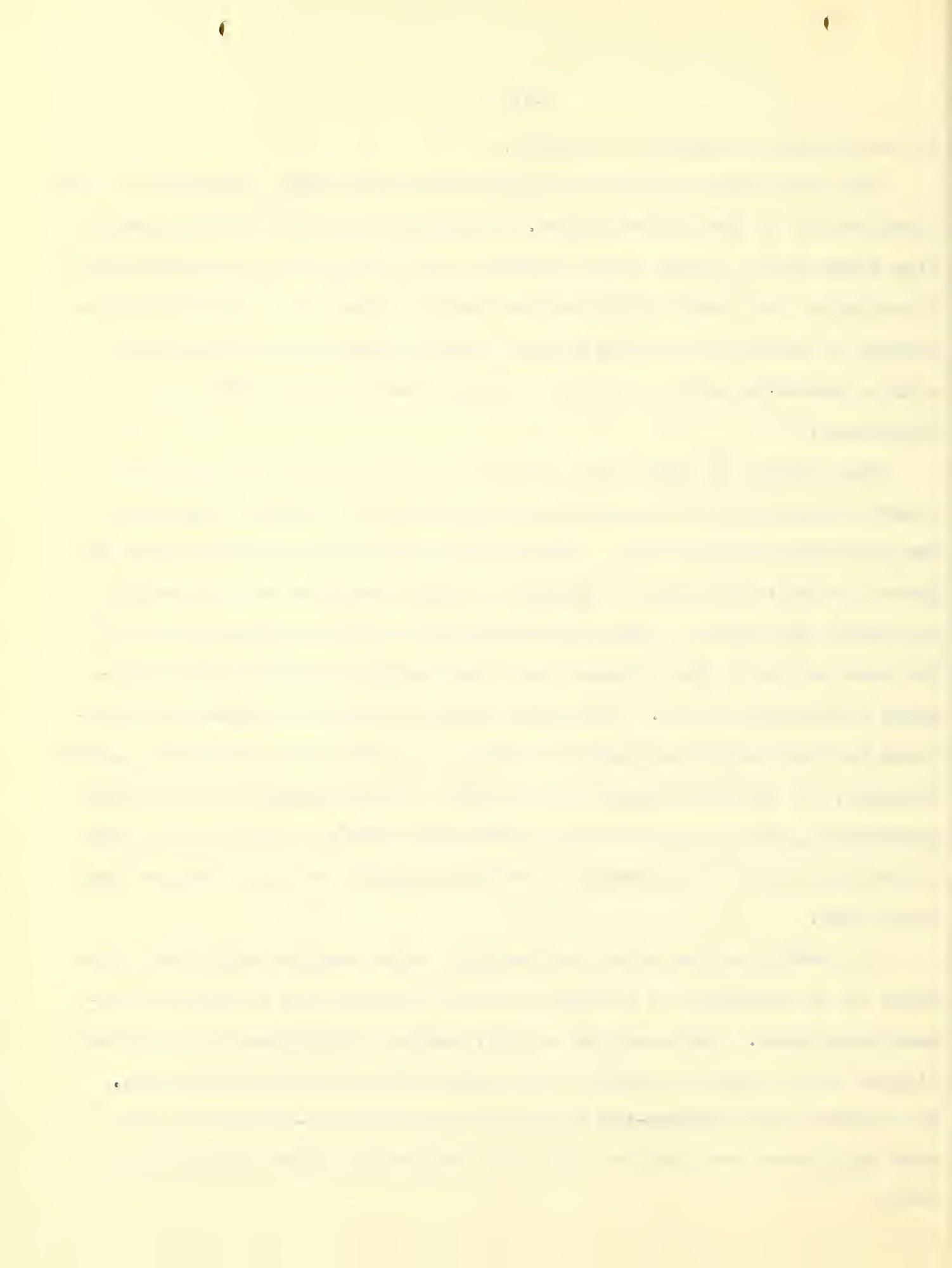


to the forces of liberty in America.

After the Revolution the liberty of the press was guaranteed in the Constitution of the United States. The first amendment to the Constitution reads thus: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The purpose of this rather extended discussion was to establish a secure background for the question regarding the constitutionality of the Alien and Sedition Acts. This survey will show that the use of the press for the expression of opinion on public matters was the result of no sudden agitation or temporary enactments, but has developed out of the past as one of the soundest and most necessary rights which safeguard a free government. With these facts in mind it is easy to understand how the Republican party was able to rally to its standard a great majority, to denounce Federal legislation in the Virginia and Kentucky resolutions, and to overwhelm the Federalist party in 1800 in the name of and by virtue of the doubted constitutionality of the Alien and Sedition Acts.

In looking at the Alien and Sedition Acts from the political viewpoint it is necessary to consider the two events which form the political background. The election of 1796 serves to introduce the dominant figures of the period, showing their views and political tendencies. The quarrel with France--the all absorbing question--presents those issues which were destined to divide the people of United States politically.



During the summer of 1796 Washington gave no evidences of his intentions regarding a third term, and both Federalists and Republicans had chosen electors to support him had he decided to accept, but no September 17 came his definite refusal in his Farewell Address. That summer and fall were strenuous times. His withdrawal gave full opportunity for the display of party feeling, and allowed it to go unrestrained by any dominating personality. Washington had been able to lift the Presidency above party politics, -from now on it was to be a party prize.

Contestants were immediately in the field: John Adams and Thomas Pinckney for the Federalists party; and Thomas Jefferson and Aaron Burr for the Republican party. Of these Adams was the favorite, and logical choice. He had been serving his country since 1775 with great distinction. He had just completed eight years in the Vice-Presidency, --an office then considered as a stepping stone to the Presidency. He had seen service abroad, was intimately connected with American independence, in fact the mover of the Declaration itself, and in every way was eminently qualified for the office in so far as experience could prepare any man.

As a man, Adams, to his contemporaries, was characterized as one "of great firmness; of a decisive independent manly character; of the utmost integrity, and patriotism." He was held to be of aristocratic tendencies, attached to the policy of Washington, a believer in the rule of the "well born", and that the hewing of wood and drawing of water belonged to the "canaille multitude". The election of Adams would, it was believed, commit the country to strict neutrality, to a support of the Jay Treaty with England, to an entrance into the war against France if need be, to an indorsement of the United States Bank, and to a probable

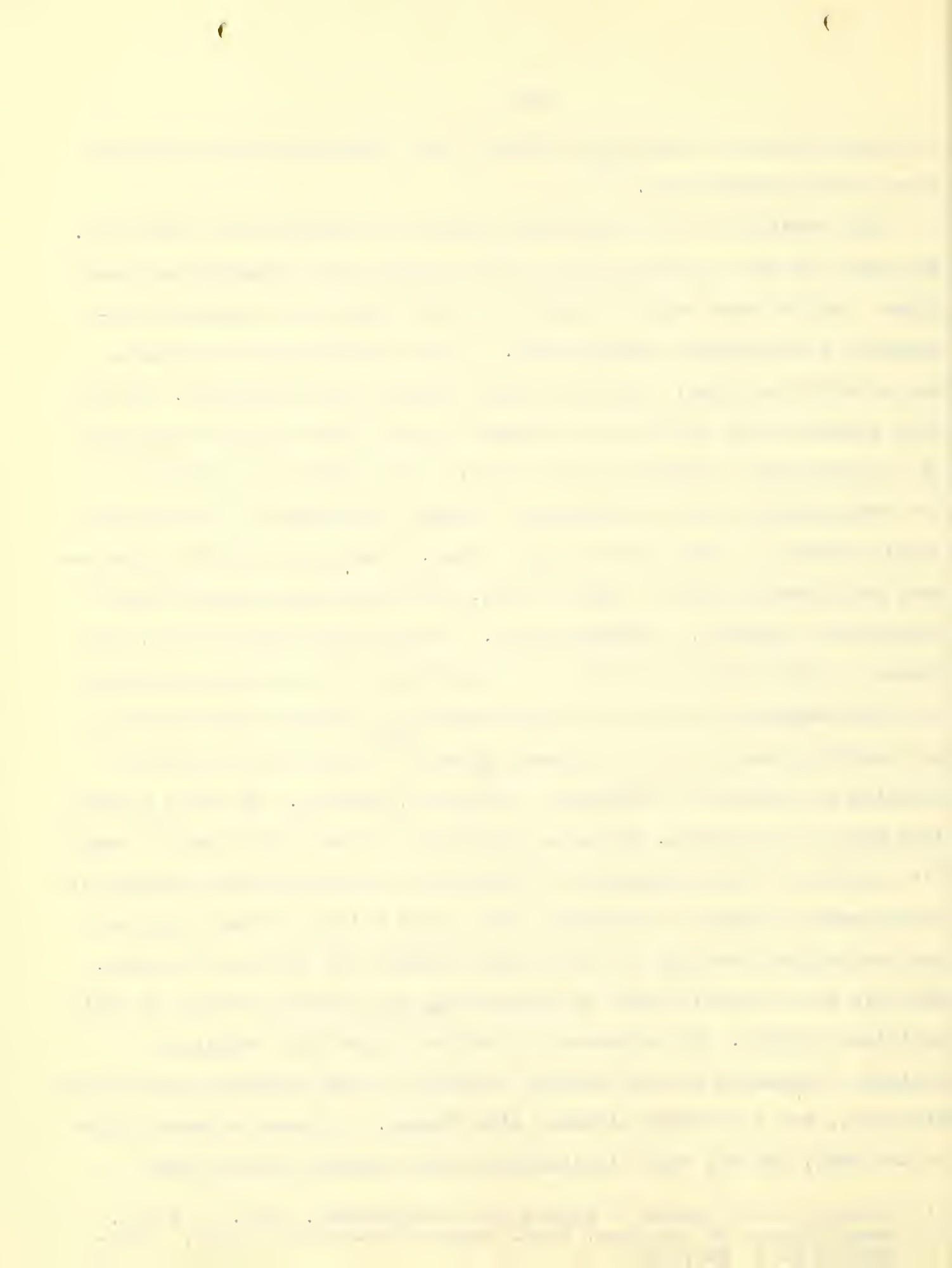


continued policy of increasing federal power through a loose construction  
(1) of the Constitution.

The candidate of the Republican party for President was Jefferson. He, too, had been in the service of his country since pre-Revolutionary times. He had seen service abroad, and like Adams was intimately associated with American independence. To his contemporaries he was a man of much knowledge, especially philosophical and scientific. He has been characterized thus by one writer: "no one will deny him the praise of a considerable literary genius; and for his diplomatic writings he has been greatly, and in some degree justly, commended". "But from his public conduct, I take him to be of a weak, wavering, indecisive character; deliberating when he ought to act, and frequently acting without steadiness, judgment, or perseverance." "With this opinion of Mr. Jefferson, I might think him fit to be a professor in a college, President of a Philosophical Society, or even Secreatry of State; but certainly (2) not the first magistrate of a great nation." This view should not minimize an opinion of Jefferson's abilities, however. He had a tremendous hold on the people, and as a politician he has rarely had his equal. With nothing of the spectacular of Hamilton, he yet exerted, through his lieutenants, a magnetic influence which could enlist and hold together men and popular feeling; he was in this respect far superior to Adams, and this was no small factor in determining the ultimate result of their political rivalry. The election of Jefferson meant the defying of England, abrogating the Jay Treaty, yielding to the demands of the French Directory, and a possible alliance with France. It meant a denunciation of the Bank, and any other legislation which extended the national

(1) History of the People of United States--McMaster. Vol.II. p 296.

(2) Annual Report of the Amer. Hist. Association--1913. Vol.II. (Letters of R. G. Harper.)



authority beyond those powers definitely stated in the Constitution. The campaign was conducted very strenuously by both sides, and developed into a sort of game between England and France for political advantage. A Mr. R. G. Harper, writing from Philadelphia on Jan. 5, 1797, expressed himself to this effect: "it is well known that the French were extremely desirous of seeing Mr. Jefferson President; that they interested themselves to the utmost in favor of his election; that they made a great point of his success. Had there been no other objection to him, this, in my mind would have been quite sufficient. They must have been desirous of his succeeding from one or two reasons; either because they thought him so devoted to their interests as to enter readily and of his own accord into all their views; or so weak, or vain, that it would be easy for them to flatter or frighten him into such measures as they might wish to see adopted. Probably they counted on both: either would render him unfit for President of the United States, had he no other defect." The same writer in speaking of both England and France says: "they endeavor to work on our passions; and if one of them should find in our country, or in those who administer our government, a violent hatred against its rival, or a strong affection toward itself, it will not fail to lay hold on those feelings in order to direct our counsels". No doubt much of the activity of the Republicans, exhibiting their extreme prejudices, grew out of their hostility to the policy of the Federalist government which had committed this country to strict neutrality in face of the Treaty of 1778 with France, and then had seemed to aggravate the French sympathizers by the Jay Treaty with England. These treaties could well be included as part of the campaign material in 1796, but have been reserved

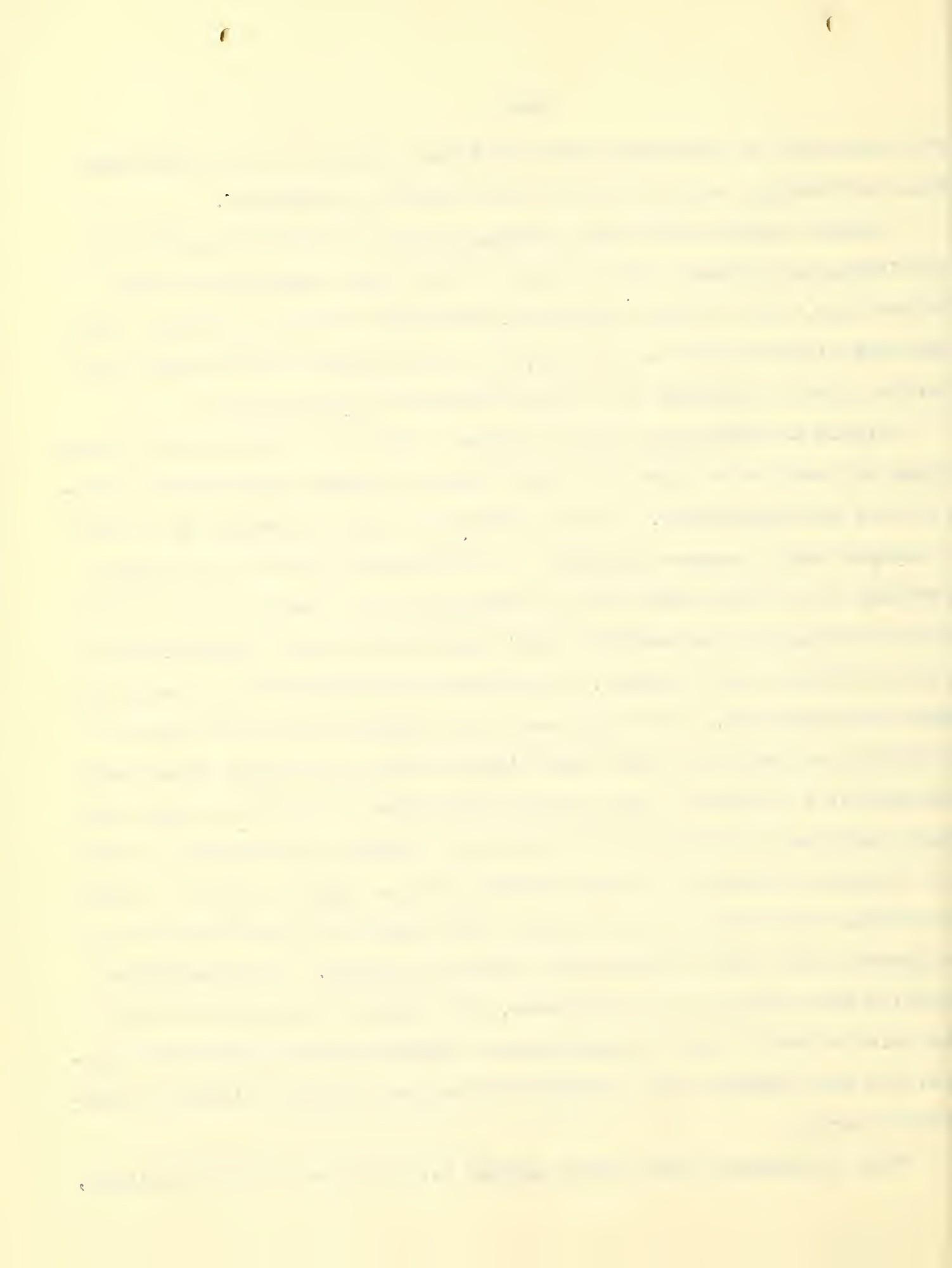


for discussion in connection with the French quarrel-- to be considered from the foreign, rather than from the domestic, standpoint.

Another factor which had a bearing on the election was exerted by the "Democratic Clubs". They tended to keep alive opposition to the Federalists, and to foster Republican sentiment wherever possible. They were not without their bad effects, for their violent partisanship often carried them to extremes which were injurious to their cause.

Within the Federalist party, however, there was something more dangerous and more to be feared than the violent partisan spirit which characterized the Republicans. It was a factional spirit directed by no less a manager than Alexander Hamilton. It fortunately did not make itself severely felt at this time, but it proved to be the seed of that discord which eventually so undermined Adams' administration that the Federalist party could not hold together. The reasons for Hamilton's antipathy are vague and uncertain. His temperament, his impulsiveness, and love for publicity and honor must have made him, as such natures have often been, susceptible to jealousy. Endowed with abilities of the first rank, the real statesman of Washington's cabinet, and leader of his party, he was yet obliged to stand by and watch others get the highest prizes. It has been held, too, that his was a nature that could not endure the loss of influence which would follow should Adams be elected. With Washington, Hamilton was supreme in his influence, with Adams it would not be so. But this is more or less a speculation. Whatever may have been the reasons, the fact remains that a formidable faction took root within the Federalist party.

When it appeared that Adams, through his position of Vice-President,



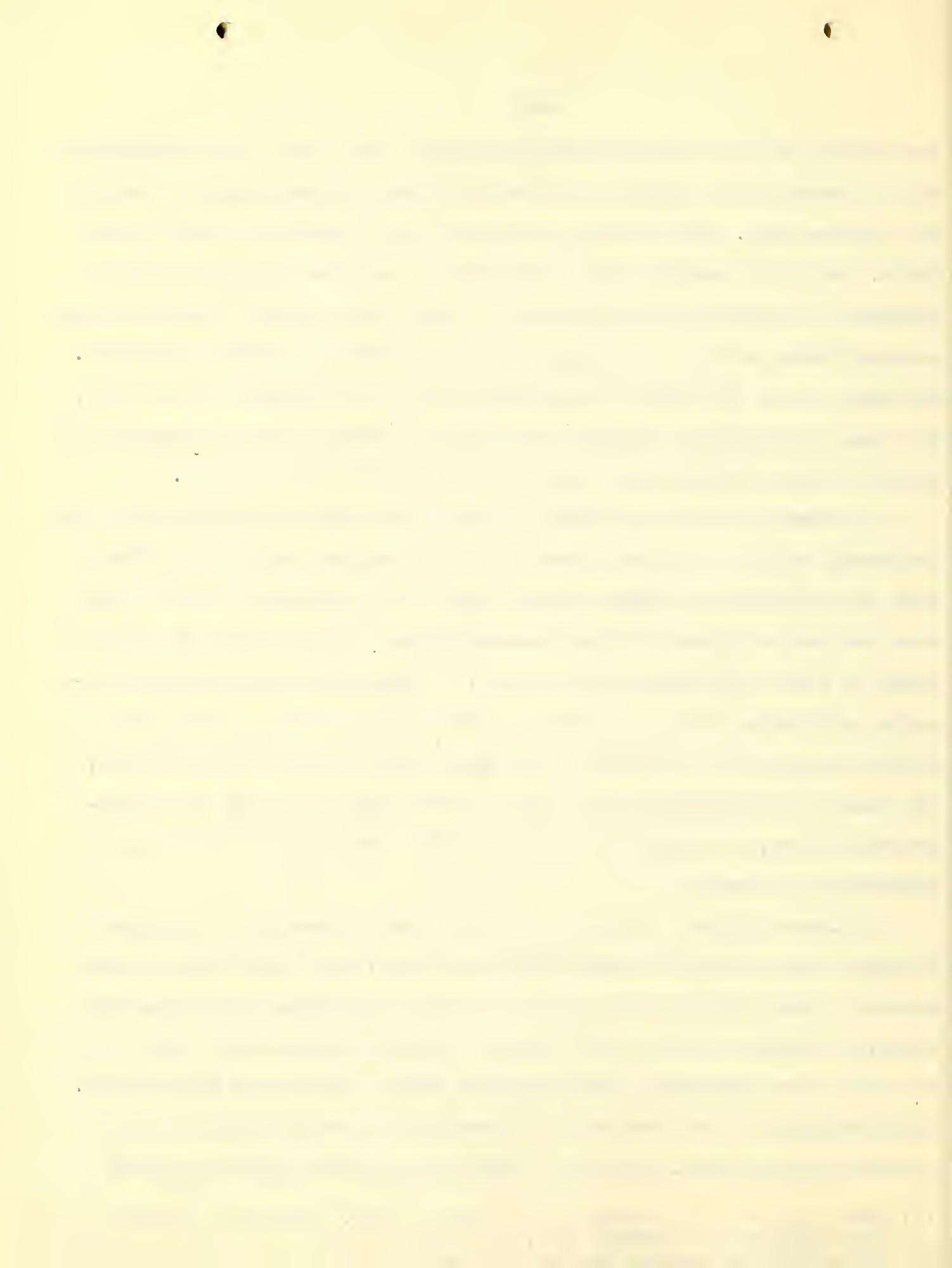
and because of his strong New England support was sure to be a candidate of the Federalists, Hamilton devised a scheme to defeat him by electing his running mate. For a man to run with Adams, Hamilton looked to the South. He tried Patrick Henry who refused. He then turned to Thomas Pinckney, of South Carolina, who was at that time popular because of the Spanish Treaty he had just negotiated, and Pinckney accepted the honor. The plan was to have the two candidates before the people for election, but when the electoral college met Hamilton's friends were to refuse to vote for Adams, which would result in the election of Pinckney.

A scheme of such proportions could not be completely disguised, and Jefferson, either to throw a brand into the Federal camp, or to offer a show of friendship for Adams, wrote him: "it is possible, indeed, that even you may be cheated of your succession by a trick worthy of the subtlety of your arch friend of New York".<sup>(1)</sup> Hamilton is said to have remarked afterward: "it is true that a faithful execution of this plan would have given Mr. Pinckney a somewhat better chance than Mr. Adams, nor shall it be concealed that such an issue would not have been disagreeable to me, as indeed I declared to the time in the circle of my confidential friends".<sup>(2)</sup>

To insure against the success of Hamilton's plan the New England electors stood firmly by their first candidate, and threw away on their second. This Pinckney ran equal with Adams in Vermont, New York, New Jersey, Delaware; gained eight votes in South Carolina, (his home state) and one in New Hampshire, Massachusetts, Rhode Island, and Connecticut. This resulted in the election of Jefferson as Vice-President,--a very curious situation, and one which could not be avoided under a system

(1) Adminstration of Washington and Adams--Gibbs. (part of a letter from Jefferson to Adams) Vol. I. p 458

(2) State Trials--Wharton (Preliminary Notes - p 11)



whereby the electors did not vote for one man as President, and another as Vice-President, but each elector voted for two persons, the highest of whom, provided he had a majority, became President, and the second became Vice-President.

That the election was not wholly characterized by a spirit which the above might lead one to expect may be seen in the following from Mr. Jefferson to Mr. Adams: "that your administration may be filled with glory and happiness to yourself, and advantage to us, is the sincere prayer of one who, though in the course of our voyage, various little incidents have happened or been contrived to separate us, yet retains for you the solid esteem of the times when we were working for our independence, and sentiments of sincere respect and attachment." (1)

The second main feature in the political background of the Alien and Sedition Laws is the quarrel with France. England and France were in the midst of a struggle for supremacy in Europe--a struggle in which the mastery of the sea played a large part. The United States remained the only important nation which could uphold its neutrality, but in so doing the country was torn by contrary claims, and became a sort of second battleground where each side contested for the first place in our political affection. We were attracted to France because she was in need, and had but recently helped us when we were in similar circumstances. With her cause we sympathized, but her aggressive policy of privateering, and her threatening attitude in starting a line of forts on the Gulf of Mexico alienated that affection to a certain extent.

As for England, it was our old home; its language, customs, laws, traditions were very much ours as well. England, too, was intimately associated with us in trade but the manner in which she held on to west-

(1) Administration of Washington and Adams--Gibbs. Vol. I. p. 458.

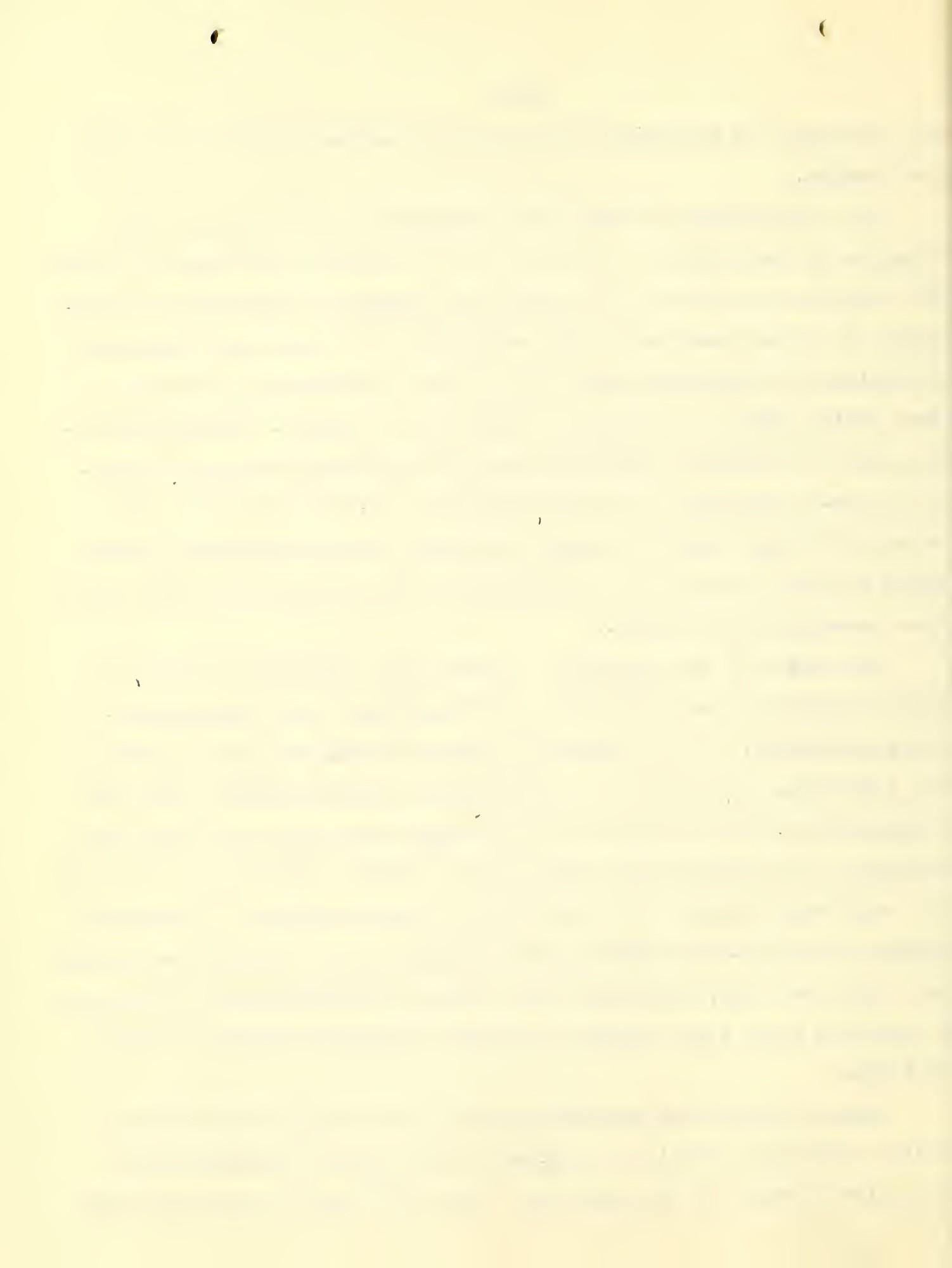


ern furposts, and ransacked our vessels for supposed deserters was objectionable.

Our relationship to France was expressed in the Treaty of 1778, drawn up by the Colonies in revolt, with the Bourbon government of France. The treaty was in effect a defensive and offensive alliance for the duration of the war then just begun, and placed upon the United States the obligation of reciprocal help to the extent of protecting the French West Indies should a necessity of this sort ever arise. During the latter part of Washington's administration the necessity came, and the United States government was confronted with a delicate situation. To avoid the Treaty would be a very, very much, and perhaps justly, criticised act; but to go to war with England, who controlled the seas, would mean commercial ruin for us.

The weight of the arguments, together with expediency, seemed to support neutrality--a policy which Washington and Adams both successfully maintained. It was pointed out that a Treaty made with the Bourbon government put us under no obligations to the government which was responsible for the overthrow of the Bourbon authority, and besides the excesses of the revolutionary government of France inspired but very little confidence in either its stability or dependableness. In addition England controlled the seas and held the key to our north-west territory; and Spain, her ally, threatened our southern and south-western frontiers--a condition which would somewhat embarrass us should we decide in favor of France.

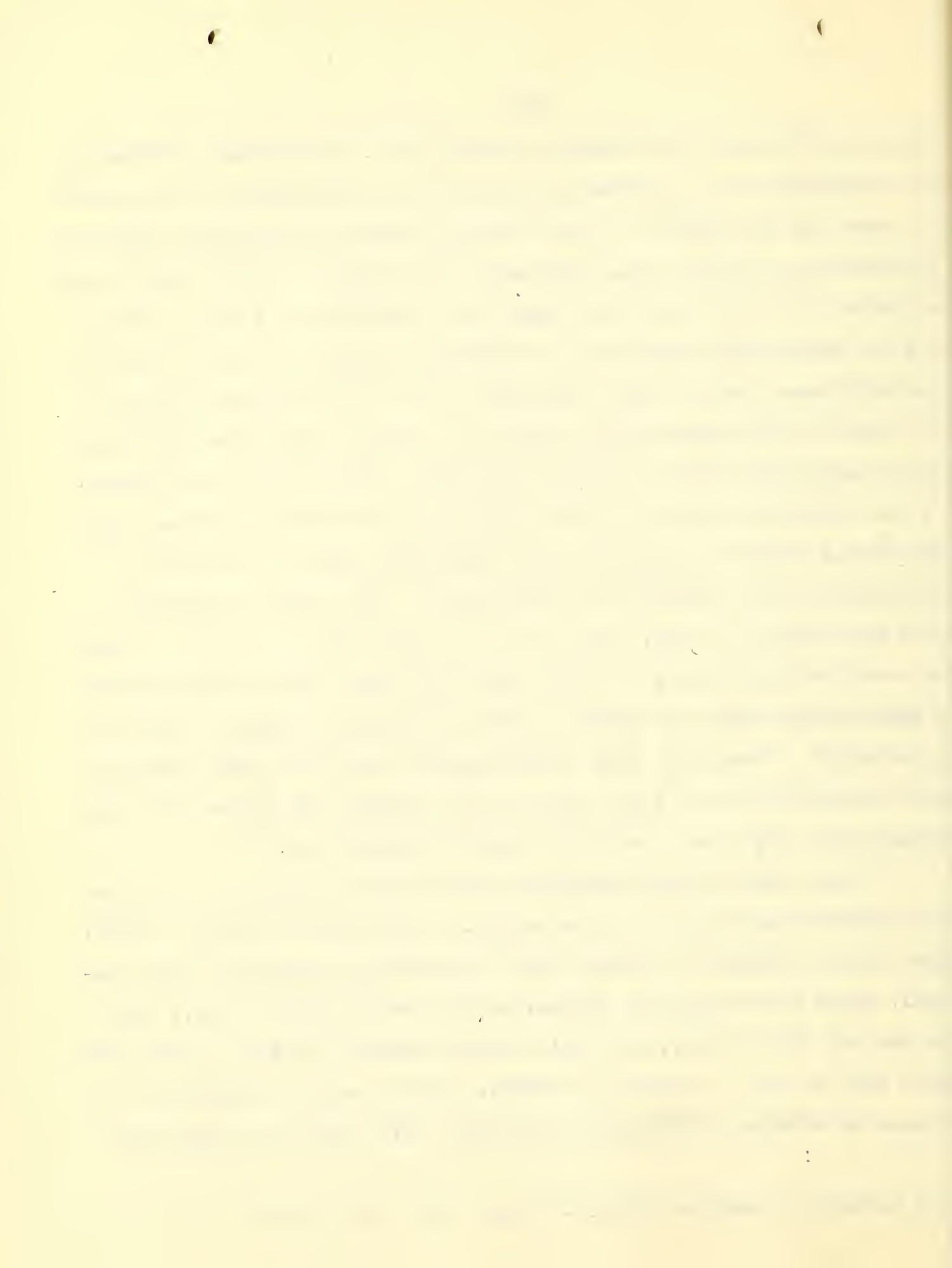
Having decided that neutrality must be the policy of the United States Washington sent Jay to England to clear up, if possible, the situation between the two countries. The result was the celebrated Jay



Treaty--confirmed by the Senate, June 24, 1795. The Treaty provided for the evacuation of the northwestern posts by the British; for the payment of debts due the subjects of each country; defined contraband; regulated privateering; and the trade privileges with England and East Indies were extended, but those with West Indies were restricted. But the Treaty did not prevent the impressment of American sailors; it did not provide any settlement for the many slaves taken away by the British armies at the close of the Revolutionary War; and it did not guarantee any change in the arbitrary policy of England regarding neutral trade with France. It was believed, however, by the authors, Jay and Lord Grenville, that the Treaty would be acceptable, and indeed was made in a spirit of friendliness and toleration by both parties. But when the contents were made public in July, there arose a fierce storm of protest. Madison said that the "treaty from one end to the other must be regarded as a demonstration that the party to which the envoy belongs is a British government". "Damn John Jay! Damn everyone that won't damn John Jay! Damn everyone that won't put lights in his windows and sit up all night (1) damning John Jay" was a sentiment heartily approved of.

A large part of this disapproval was because movements of passion are quicker than those of understanding. People did not stop to think. They did not appear to consider that our trade was nearly all with England, which in war would be ruined; that we had no army or navy; that we had but little money, and that even the purses of Europe at that time were shut to us. It was war or treaty, and Jay went to England not to engage in a "trial of diplomatic fencing." His object was peace, and

(1) History of American People--Wilson. Vol. III p. 140.



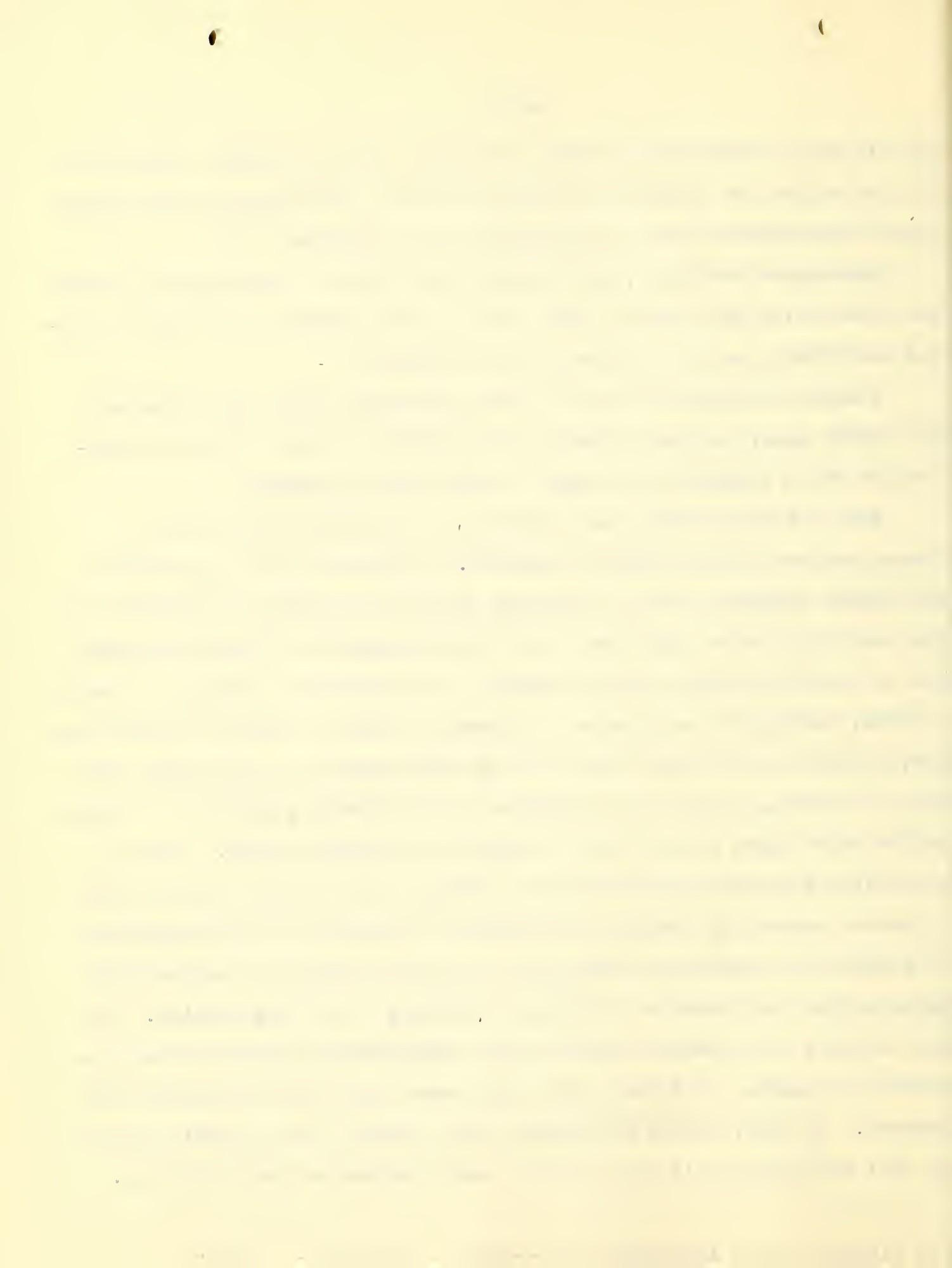
he felt that he had gained enough for that. Yet the country seemed angry that he had not failed; as John Adams wrote, "you cannot imagine what (1) horror some persons are in lest peace should continue."

Washington hesitated, and sought advice before accepting the treaty--the alternative was peace or war. True to his judgment, he "chose steadily and firmly, as if there had been no clamor."

Slowly the storm blew over, trade quickened, debts were adjusted, and awards made, and the firmness and prudence of Jay, and the administration which supported him began to dawn upon the people.

But if the Jay Treaty had brightened the British horizon, the French horizon had perceptibly darkened. On March 4, 1797, John Adams had become President and he inherited from the preceding administrations the conditions above explained, but with an aggravated French situation due to the Jay Treaty, and the conduct of our minister, Monroe, in Paris. In 1794, Washington sent Monroe to France to take the place of Gouverneur Morris, who was disliked because of his anti-republican prejudices, and who as a result, lacked the confidence of the French government. Monroe, on the other hand, was an ardent supporter of republicanism. The instructions which he carried with him conveyed the idea that Jay was not to make a commercial treaty with England, and acting on this assumption he allowed his republican enthusiasm to assert itself in a manner that quite misled the French as to the real meaning of the Jay mission. It was probably not intended that Monroe's republicanism should serve as a screen to beguile the French while they were being outwitted across the channel. In fact, Monroe was given a mild censure, and politely informed that his mission did not call for such conspicuous demonstrations.

(1) History of the American People--Wilson. Vol. III. p. 140.



But the facts remained the same: France believed she had been tricked, and Monroe believed he had been imposed upon. Monroe's conduct continued displeasing to Washington, and in December, 1796, Charles C. Pinckney arrived in Paris as Monroe's successor.

During the previous October France had come under the control of the Directory, and the new government adopted a hostile policy toward America. This policy was doubtless adopted for several reasons: Adams had been elected President in 1796 and France expected but little sympathy from him, for by his acts and declarations he was pledged to the general policy of Washington; and secondly, the recent successes of Napoleon in Austrian Lombardy had raised the enthusiasm and confidence of the French government. Accordingly, Mr. Pinckney was given his passports after two months of unofficial life in Paris, and in August, the French minister to the United States, Adet, was recalled.

The crisis called for unusual action, and on May 15, 1797, a special session of Congress was called. Adams' opening message met with approval: he attacked the attempt of French diplomacy to separate the affections of the American people from their government, and declared that "such attempts ought to be repelled with a decision which shall convince France and the world that we are not a degraded people, humiliated under a colonial spirit of fear and sense of inferiority, fitted to be the miserable instruments of foreign influence, and regardless of national honor, character, and interest." He expressed the intention of sending a new mission to France, but recommended measures of defense, especially a naval force. The whole tone of the message was firm, and expressed the conviction that United States had been just and impartial  
(1)  
in its conduct.

(1) History of the United States--Schouler. Vol. I. p. 551.

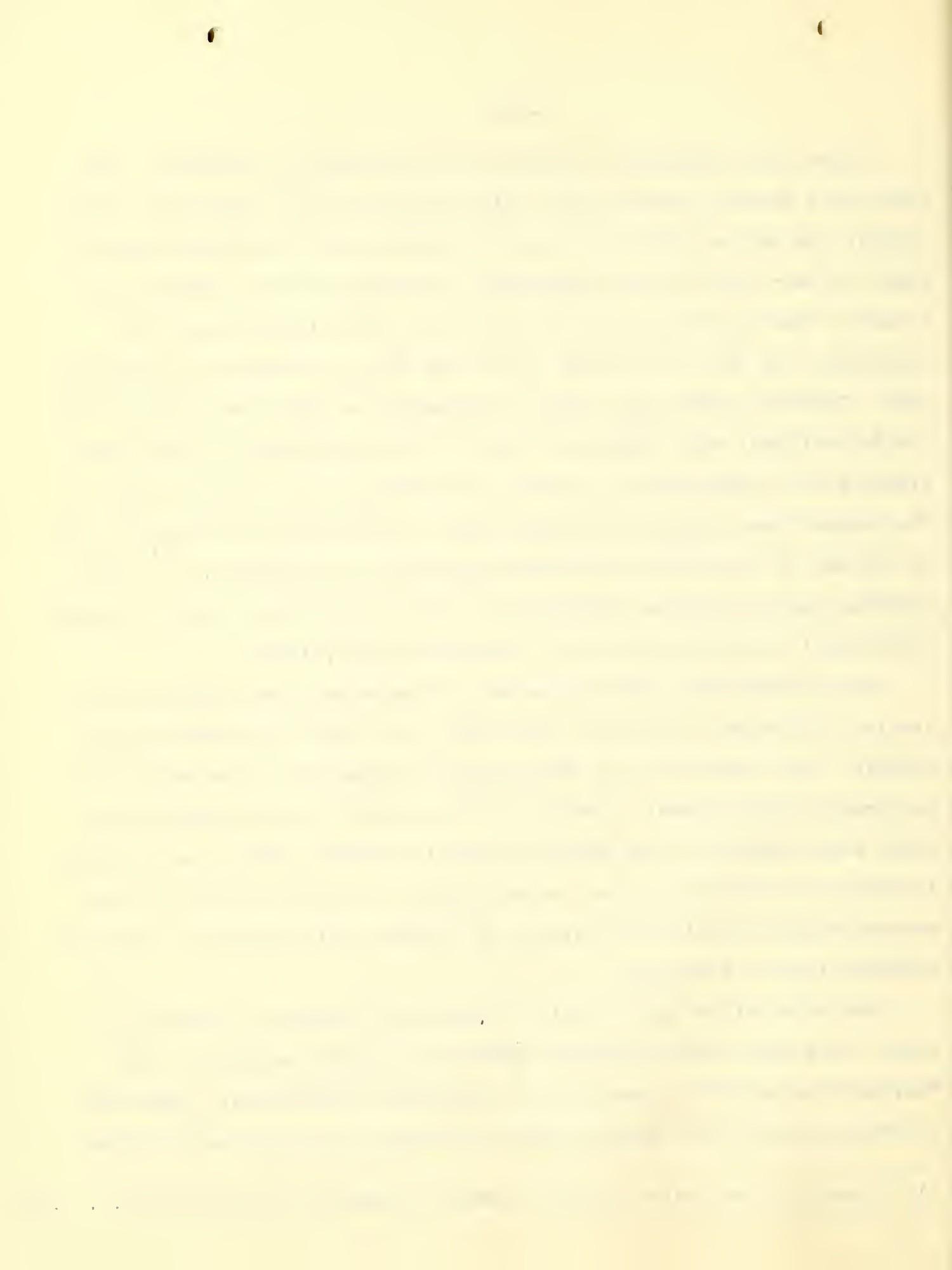


There was a Federalist majority in both houses of Congress. The Senate was decidedly Federalist, while the House was divided into three groups: the extreme Federalist led by William Smith and Harper who were ready for war, and who were supported in the Cabinet by Pickering and Wolcott. The Republicans, who believed that the situation was not dangerous, and that if it were, it was due only to Federalist mismanagement. Thirdly, there was a group of moderate men who usually acted with the Federalists; whom Jefferson called "a few individuals, of no fixed system at all, governed by the panic or prowess of the moment; flap, as the breeze blows, against the Republican or aristocratic bodies, and <sup>(1)</sup> five to the one or the other a preponderance entirely accidental." This Congress passed measures looking to the national defense, acted in accord with Adams' recommendations, and adjourned July 8, 1797.

In the meantime a new commission to France had been appointed consisting of Finckney, Marshall, and Gerry, and France had become openly hostile. She seemed bent on chastising Americans into a revocation of the treaty with England. American vessels having British property on board were seized; and the French courts in the West Indies were strongly biased in their decisions. As a pretext for seizure an old law was revived which permitted the capture of a vessel which failed to carry an official list of its crew.

But this action on the part of France only served to injure her cause. The people of the United States were growing wearied of the "unrequited service" pleas, and her hysterical reproaches. There was a growing feeling that United States and France no longer had a common

(1) History of the United States--Schouler. (Quoted by Schouler) Vol. I. p. 353



interest. The illusion of "fraternity" and the "rights of man" was dissolving. This new drift of public feeling tended to band citizens together, and there was a closer approach of parties on the French issue. Jefferson was quick to discern the tendency; he remarked, "I can scarcely withhold myself from joining in the wish of Silas Deane,  
<sup>(1)</sup> that there were an ocean of fire between us and the Old World."

It is true that the turn in the French situation was bound to have a very positive effect on domestic politics,--an effect which men, less keen than Jefferson, could see would work injury to the Republican party and serve to strengthen and unify the Federalist. The policy of the Federalist was upholding well the national honor, and in the face of a common danger it would be triumphant, for American politics have a faculty of ending at the waters' edge.

But there were many who held Adams responsible for the condition, many who were disappointed to find him a party man in spite of his inaugural address, and many who distrusted absolutely the Federalist party. This opposition not only expressed itself through the recognized party channels, but employed a bitter and partisan press to spread its views before the public. The situation was further aggravated by the presence in this country of some thirty thousand French residents, and some fifty thousand British who at heart were loyal to their respective countries, and also by the recent arrival in this country of certain foreigners with opinions so radical that their home governments refused to tolerate them. There were, therefore, two outstanding features in the American Political situation when Congress was called together in regular session, November 13, 1797; first a bitter party feeling, which Adams'

(1) History of the United States--Schouler. Vol. I. p. 352.



personality had been unable to dominate, expressed through a press not only malignant, but under the influence of radical foreigners; and secondly, a foreign situation such that a favorable turn would give to the Federalists great power-- a power which used properly would secure for the party a position of undisputed political influence in the United States, but misused would perhaps lead to its downfall.

The three envoys, Pinckney, Marshall, and Gerry, arrived in Paris in October, 1797, but only to be told by Talleyrand, the French minister of foreign affairs, that the Directory had taken exceptions to the President's speech on the opening of Congress, and felt therefore that it could not receive them openly. The commission was informed, however, that a payment of tribute to France for past insults would go a long way toward adjusting matters, and probably gain for the commissioners an official reception. The whole deal was so underhanded and unbecoming of the great French nation that the Americans could hardly attach any truth to it. But when they were assured of its validity, they treated the proposition with admirable contempt and dignity; the American answer being, "millions for defense, but not one cent for tribute."

In the meantime the leaders had been informed by Adams of the probable failure of the mission to France, and Congress had been advised to pass adequate defense measures. The publication of this news produced great excitement; Federalists becoming enthusiastic and ready to urge forward their defense measures with vigour; while of the Republicans, some were amazed, while others gave expression to their suspicions and distrust of the Federalist administration. This latter class included those who felt convinced that the Federalist program was but a party plan, to bring United States into the war, and thereby strengthen the



central government for their own benefit. A resolution was introduced into the Pennsylvania legislature on March 20 expressing a disapproval of commencing hostilities against a people "with whom their hearts and hands have been so lately united in friendship." On March 27, Spriggs of Maryland offered in the national House three extreme resolutions (1) that it was inexpedient under existing circumstances to resort to war against the French Republic; (2) that arming merchant vessels ought to be restricted; (3) that adequate protection for our seacoast and for internal defense should be provided. A debate immediately followed between the Federalists and Republicans which was full of personalities. The sincerity of the administration seemed to be doubted, as well as the reality of an emergency as great as had been represented, and the Federalists determined to expose the full proceedings of the American commissioners in Paris. On April 3, Congress received the complete reports, excepting the names of Talleyrand's unofficial agents, who were designated as X.Y.Z.

The result of the X. Y. Z. exposure was a complete triumph for the Federalists. The conduct of the American Commissioners was inspiring, and the patience, calmness and justness of the administration won for it unbounded support and enthusiasm. The doubtful members of Congress went over to the President's side, Speaker Dayton among them. Two-thirds of the Senate, and a decided majority in the House were now united in support of the administration. The Republicans were completely humbled, and reduced "to a more feeble minority throughout the nation than they had been any day before since their first

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organization as a party."

Measure after measure was now passed in preparation for war. Provisions were made for fortifying coast towns, and for protecting navigation. A navy department was put into operation with Benjamin Stoddart as Secretary; and the President was authorized to increase our fleet. Bills were enacted for the purchase of arms, cannon, and military stores. In May an army was authorized, and in July, Washington was appointed commander-in-chief, with Hamilton second in command. In June, a law was passed suspending commercial relations with France after July 1. To defray expenses a loan was authorized, and a direct tax was laid on real estate. The whole session was one of boldness and activity.

The country also exhibited the same energy and spirit. Everyone knew "Hail Columbia" and Adams and Liberty," songs composed at this time which rang with enthusiasm for defense against an enemy. Patriotic services were held everywhere, and addresses and petitions expressing full sympathy with the administration were broadcast. Patriotism was fostered by military organizations, and men were eager to enlist, and to give evidence of their loyalty to the land for which their fathers had fought and died.

On the wave of this enthusiasm, secure in Congress and with the people, the Federalist party made the fatal blunder of passing three measures which manifestly operated directly, and almost exclusively, upon its political opponents. The time had come in which to punish the malignant Republican spokesmen.



The three measures were a Naturalization Law, and the Alien and Sedition Laws. The Naturalization Law of 1795 required a residence here of five years. The new law, passed June 18, 1798, required a residence of fourteen years. Although the law did not apply to those aliens already within the country, it was nevertheless a stringent law. It was repealed in 1802.

The Alien Law of July 6, 1798, applied to foreigners under the two different conditions of peace and ware. In time of peace the President was empowered by the law to expel from the country any alien thought to be dangerous, or suspected of plotting against the government. Disobedience was punished by a three year imprisonment term, and the offender was liable to imprisonment at the will of the President, should he return before his time of exile had expired. In time of war the President was given power to arrest, imprison, or banish all enemy aliens who might be deemed dangerous. The law was to be enforced for two years.

The Sedition Law, passed July 14, 1798, applied to Sedition acts and seditious writings. To combine or to conspire unlawfully to oppose government measures, or to prevent an officer from doing his duty, or in the words of the act: "to commit, advise, or attempt to procure any insurrection, riot, or unlawful assembly, or combination" was made an offense punishable by a fine not exceeding \$5000, and by imprisonment not exceeding five years. The writing of false and malicious articles against the government, or its officers, with intent to defame or bring them into disrepute and excite against them the people of the United States, was made a crime punishable by a fine



of not more than \$2000, and by imprisonment for not longer than two years. The accused was allowed a trial and the privilege of proving the truth of the statements charged against him, but in this case a careful investigation only was accepted as a reasonable defence, and he could not summon any officers of the government, nor demand the public documents for his use.

At the time the Laws were passed there seems to have been but little opposition to them. In the House, to be sure, the vote was close, but in the Senate there was no opposition of any weight. Many of the prominent Federalists did not consider them as unconstitutional, and nearly all agreed as to their expediency. Among the cooler heads, however, there were doubts. On June 26, 1798, Lloyd of Maryland introduced a bill which embodied the principles soon after incorporated into the Sedition Act. Hamilton expressed the following opinion of it to Wolcott: "There are provisions in this bill which, according to a cursory view, appear to me highly exceptionable, and such as more than anything else may endanger civil war. I hope sincerely the thing may not be hurried through. Let us not establish a tyranny. Energy is a very different thing from violence. If we make no false step, we shall be essentially united; but if we push things to an extreme,  
(1)  
we shall then give to faction body and solidity."

The soundness of this advice is borne out by later events, and

(1) Constitutional History of United States--Von Holst (quoted by Von Holst) Vol. I. p. 149.



there is reason to believe that Adams, Wolcott, and Pinckney felt somewhat the same way as Hamilton did.

But the Federalist party as a whole was carried away by the enthusiasm of the hour; Federalist policies were right; Republican policies were wrong; and France was hostile. To the Federalists it seemed that the enemy at home must be controlled as well as the enemy abroad, and he must be restrained from throwing any obstacles in the way of the administration. Thus the Sedition Act was at one and the same time a measure of national defense, and a weapon against a malicious political enemy. Its former character was argued before the House. Members believed "it was most particularly their duty to concert measures of defense and protection" in the critical situation of affairs, and that the "business of defense would be very imperfectly done, if the operations of defense were confined to land and naval forces." They believed it just as necessary "to destroy the cankerworm which is corroding in the heart of the country." Mr. Otis, of the House, did not desire "to boggle about slight forms, nor to pay respect to treaties already abrogated, but to seize those persons wherever they could be found carrying on their vile purposes. Without this, everything else which had been done in the way of defense would amount to nothing."

(1) Von Holst; Constitutional History of United States. Vol. I. p 142

(2) Mr. Sitgreaves; Annals of Congress. 5th Congress; 2nd session.

(3) Mr. Otis; " " " " " "



To these Federalists France appeared to have an organized system of conduct toward foreign nations, to bring them within her influence and they felt that the Alien and Sedition Acts formed a necessary part of (1) the precautionary and protective measures adopted for the security of the United States. Gallatin, speaking for the Republicans, said that he believed it to be a sound principle that alien enemies could be removed--a principle existing before the Constitution and in harmony with the law of nations; but with him the question was as to when foreign (2) citizens become alien enemies.

If, however, the Alien and Sedition Laws were passed ostensibly as a part of the defensive measures which were hastened through Congress during the spring and summer of 1798, it is nevertheless true that the enforcement of the Sedition Law revealed their partisan purpose and doubtful constitutionality in a conspicuous way. The Alien Law was never enforced by Adams, and the first part of the Sedition Law--that pertaining to seditious acts--was never seriously objected to by anyone, but when that part of the Sedition Law which dealt with seditious and libellous writings was applied there arose a storm of protest. There were many who sincerely believed that part of the law to be unconstitutional, and a violation of the liberty of the press. And it is a significant fact that Republican leaders were able to make political capital out of this belief by encouraging and spreading discontent. This discontent grew in volume and intensity till it became a great factor in the defeat of the Federalists in 1800. What, therefore, were the great objections which people had to the Alien and Sedition Laws that the Re-

(1) Report of House Committee. Feb. 25, 1799--AMR. State Papers --Misc. I.  
(2) Gallatin: Annals of Congress. 5th Congress; 2nd Session. May, 1798.



publicans could thus utilize in their campaign; and secondly, what defense could the Federalists offer?

First, with regard to the Alien Law.

The Republicans contended that the law denied trial by jury, and thus claimed that provision of the Constitution which guarantees a trial by jury for all crimes, except in cases of impeachment, had been violated. This law invested the President with power to send aliens away on his own suspicion--a punishment without a trial by jury.  
<sup>(1)</sup>

In the second place, it was contended that the law was unconstitutional because in the first article and the ninth section of the constitution migration or importation of such persons as any of the states thought proper to admit was guaranteed till the year 1808.  
<sup>(2)</sup>

And thirdly, the law against aliens was considered as a wrong policy, and too harsh. The rigor of the law was such that the desirable and well-to-do immigrant would stop coming here--a situation to be lamented in that there was much uncultivated land, the foreign element contributed wealth, and the State legislatures had thought proper to offer no hindrances to this influx of desirable foreigners heretofore.  
<sup>(3)</sup>

The Federalists had answers to these objections.

In answer to the first, that the Alien Law denied trial by jury, they maintained that the Constitution was made for citizens, and not for aliens; that aliens enjoyed the laws not by right, but by favor and permission.  
<sup>(4)</sup> Secondly, that the provisions of the Constitution relative to "presentment and trial of offenses by juries" did not apply to the re-

(1) American State Papers. Misc. I.

(2) Amer. State Papers. Misc I.

(3) "Independent Chronicle"--January, 1790.

(4) Amer. State Papers. Misc. I.



vocation of an asylum given to aliens. Those provisions respected only crimes, and they maintained that an alien might be removed without having committed any crime for the sake of security, whereas a citizen had a right to remain, and could not be disfranchised except for offences first ascertained, on presentment and trial by jury. <sup>(1)</sup> The Federalists maintained that the removal of an alien was not a punishment inflicted for an offense, but from motives of general safety. The law permitted the removal "of an indulgence which there is danger of abusing, and which we are in no manner bound to grant or continue." <sup>(2)</sup>

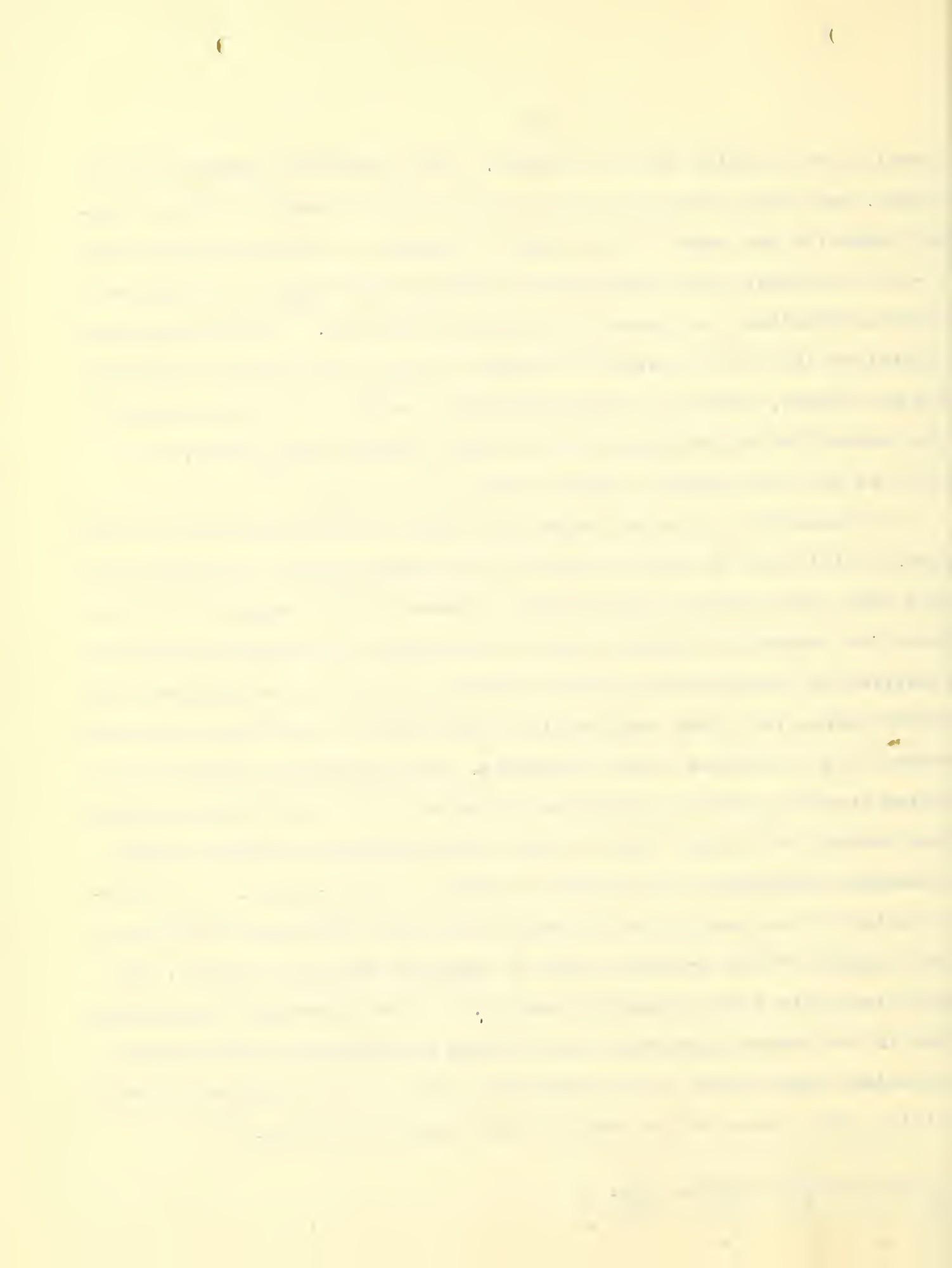
In answer to the second objection, that the Alien Law violated the first article and the ninth section of the Constitution, the Federalists said that this section applied only to slaves for two reasons: (1) because the restriction applied only to the states in existence when the Constitution was adopted, and (2) because the restriction continue only twenty years, for which modification there could not have been the least reason, had it applied to all emigrants. The Federalists further contested that "to prevent emigration in general is a very different thing from sending off, after their arrival, such emigrants as might render themselves dangerous to the peace or safety of the country." An interpretation of the section as the Republicans gave, they said, would prevent Congress "from driving a body of armed men from the country, who might land with views evidently hostile." <sup>(3)</sup> The Federalists maintained that if the federal government were denied the right to remove dangerous aliens there would be no authority in the country to do so--a proposition which could not be admitted with reason or safety. <sup>(4)</sup>

(1) Amer. State Papers. Misc. I.

(2) " " " "

(3) " " " "

(4) " " " "



Turning to the Sedition Law, one finds the Republican attack more formidable.

They maintained in the first place that the Sedition Law was unconstitutional because Congress in passing it had exceeded the rights expressly given to it by the Constitution. All power not so given was reserved for the states or people. They held that the clause: "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," under which grant of power the Sedition Law was passed, was only an auxiliary to the enumerated powers, and not an extra grant of power only in so far as it operated to maintain the "foregoing powers."<sup>(1)</sup>

The Republicans again believed that the Sedition Law was contrary to that part of the Constitution which declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the liberty of the press". They maintained that the law gave absolute power over the press.<sup>(2)</sup> Any law which threatened the loss of rights so dearly won was sure to create great excitement in a country such as this where the circulation of opinions, and a free discussion of public measures and men was essential to a sound management of the government. As Cooper said in his trial, the law is unsound because under its operation "the press is open to those who will praise, while the threats of the law hang over those who blame the conduct of the men in power".<sup>(3)</sup> This was fundamentally opposite to the convictions of the people regarding the liberty of the press.

The Republicans in the third place objected to the Sedition Law

(1) Nicholas: Annals of Congress. 5th Congress; 3rd session.

(2) " " " " "

(3) Cooper's speech quoted in State Trials--Wharton.



because its operation was unjust. To them, the law was enforced by judges, juries, and marshals, all of whom were the instruments of the party attacked, either directly or indirectly. There was no uniform rule in force in the United States courts for the selection of jurors. The law declared that they were to be chosen according to the custom within the several states. In New York, Pennsylvania, Maryland, New Jersey, and Virginia the marshals accordingly selected the jurors--thus exposing the system to the cry of "packed juries". The vigor which some of the judges, especially Judge Chase, exhibited in the disposal of sedition cases only served to aggravate the Republican prejudices. The bench to Chase became the scene for displays of party zeal. The enforcement of the Sedition Law became a partisan affair in the minds of the Republicans.

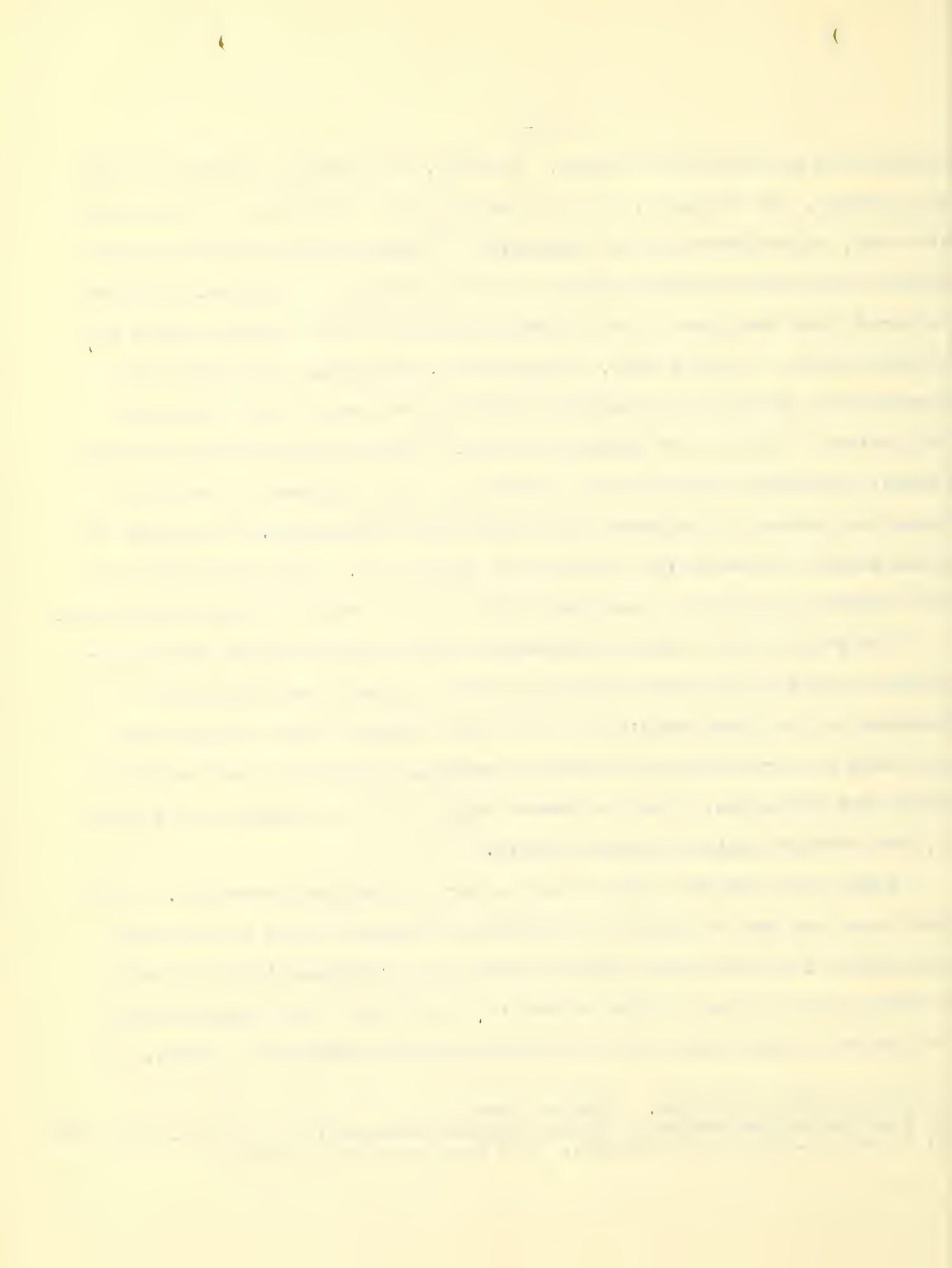
The Republicans further maintained that the states were fully competent to deal with cases involving private injury from defamation. Nicholas in the House said: "It is to them (States) that our officers must look for protection of persons, estates, and every other personal right; and therefore, I see no reason why it is not proper to rely upon it, for defense against private libels."<sup>(3)</sup>

Again, the law was said to have a sort of English character. There were those who saw in England a hereditary king who could do no wrong, surrounded by officers who derived much of his inviolability in theory at least, and the law to them seemed to thus protect the President and his officers, whose acts could not be seriously condemned. Cooper, in

(1) State Trials--Wharton. (Cooper Case)

(2) History of the People of United States--McMaster; Vol. II. P., 472 & 473

(3) Nicholas--Annals of Congress. 5th Congress; 3rd Session.



his defense, remarked: "I know that in England the King can do no wrong but I did not know till now that the President of the United States had  
(1) the same attribute." They believed this dangerous to the fundamental conception of government in United States--that public officers are public servants, responsible to the people, and subject to their election.

The Republicans also claimed that the government of the United States was in principle much like a business corporation, and that the Sedition Law failed to recognize the fact. The Independent Chronicle of Boston, published in January, 1799, states the following:

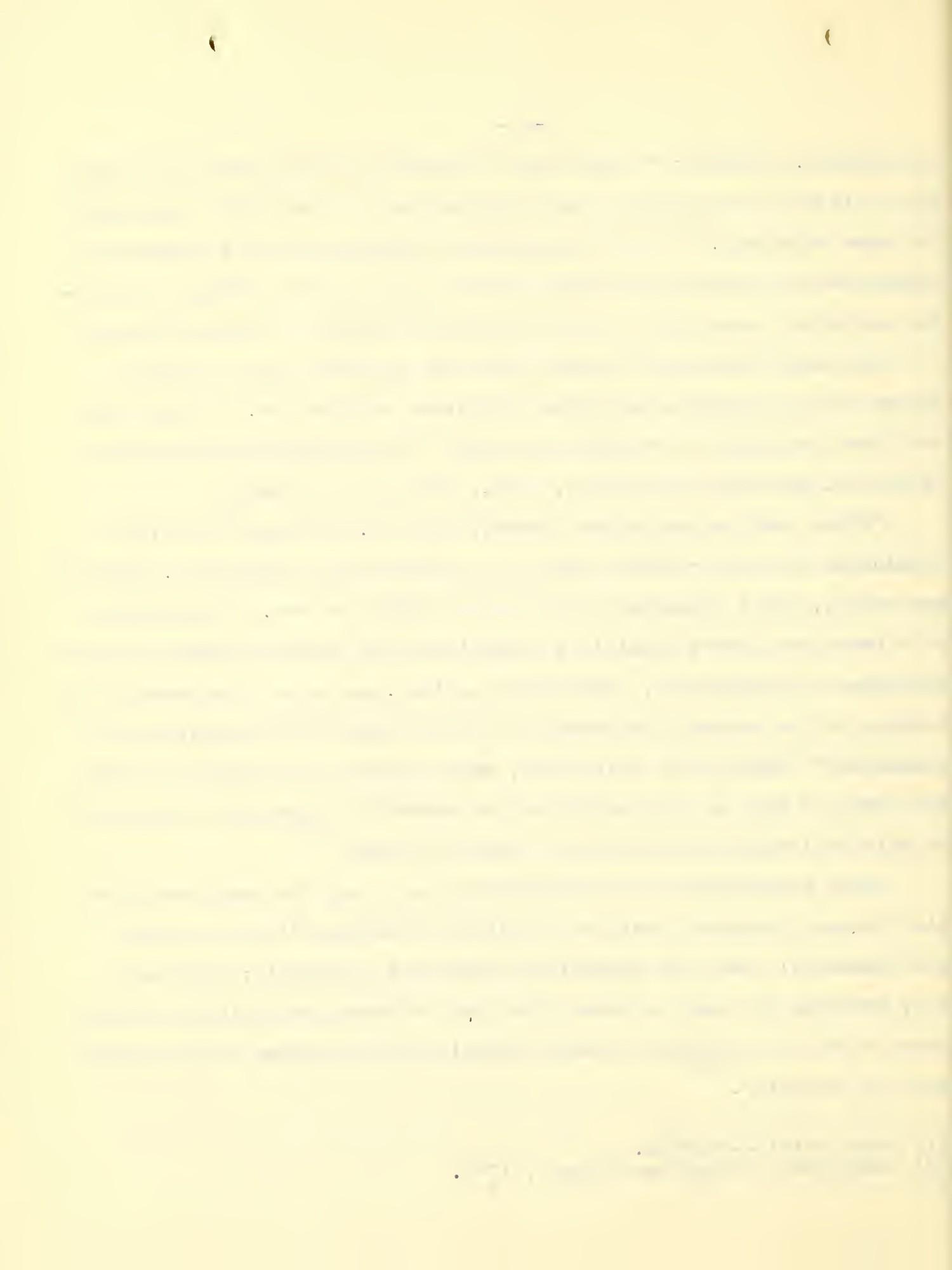
"After such societies are formed, would it, or would it not, be considered by every rational man to be preposterous, oppressive, ruinous, and unjust, and a violation of the mutual rights of men, to pass laws with heavy and severe penalties, prohibiting the several members of such societies to complain of, remonstrate against, and even to reprobate the conduct of the servants and agents of their respective corporations and companies?" "Deprived of this right, what rational and effectual means can there be left to such societies for reforming abuses and corruptions  
(2) to which all human societies are liable at least?"

Other contentions of the Republicans were that the Laws were hurried through Congress; that the condition of affairs did not justify such measures; that they established dangerous precedents; and that they rendered one open to attack from any informer, necessitated in many cases a trial in a distant court, incurring great expense without granting  
(3) any indemnity.

(1) State Trials--Wharton.

(2) Independent Chronicle--January, 1799.

(3) " " "



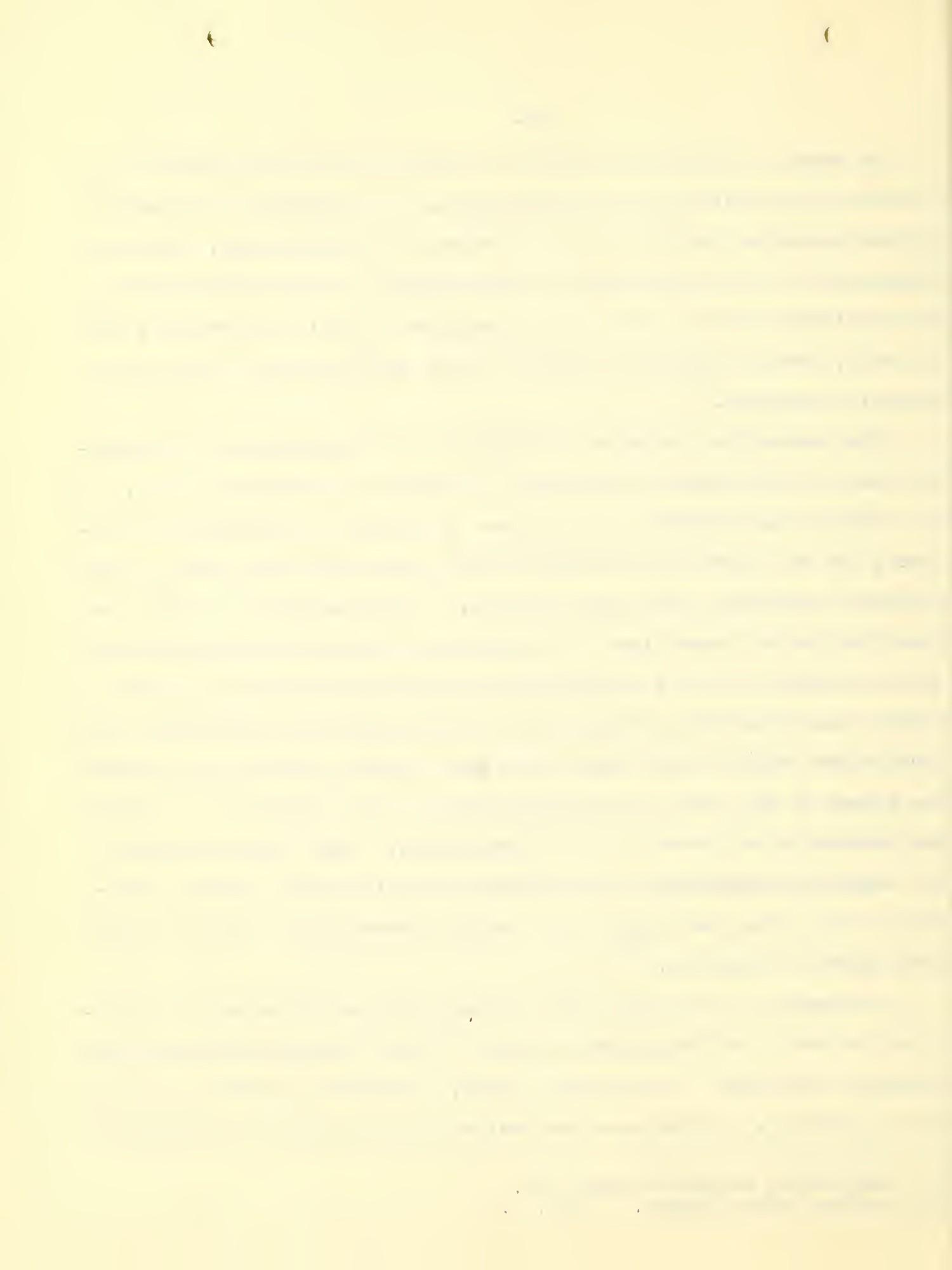
In short, the Sedition Law was un-American, directly opposed to the letter and spirit of the Constitution. Its obstinate enforcement by the Federalist leaders was most unwise, for "republicans, like religion, was an inherent faculty in the breasts" of American citizens, and the liberty of the press they considered as their birth-right, and no party, however elevated in power, could deprive them of this privilege with impunity.

The Federalists defended themselves from these attacks by explaining the view they took of the laws. In answer to the first charge, that the Sedition Law required the exercise of a power not delegated to congress, and was therefore unconstitutional, they maintained that in this emergency precedents only were followed. It was pointed out that congress had before passed laws not expressly provided for by the Constitution, namely; an act for punishing certain crimes against the United States: laws concerning piracy; acts for punishing those who commit perjury in any United States court, attempt to bribe judges, or to falsify the record of any court of the United States, or to obstruct or resist the process of any court of the United States. These were provisions not expressly authorized, but considered constitutional because necessary to the proper carrying out of certain powers which had been definitely given to Congress.

In answer to the charge that the Sedition Law destroyed the liberty of the press the Federalists defined "liberty of the press" as they understood the term. In the first place, "liberty" consisted in permission to publish, without previous restraint, but subject to punishment

(1) Independent Chronicle--May 1799.

(2) American State Papers. Misc. I.



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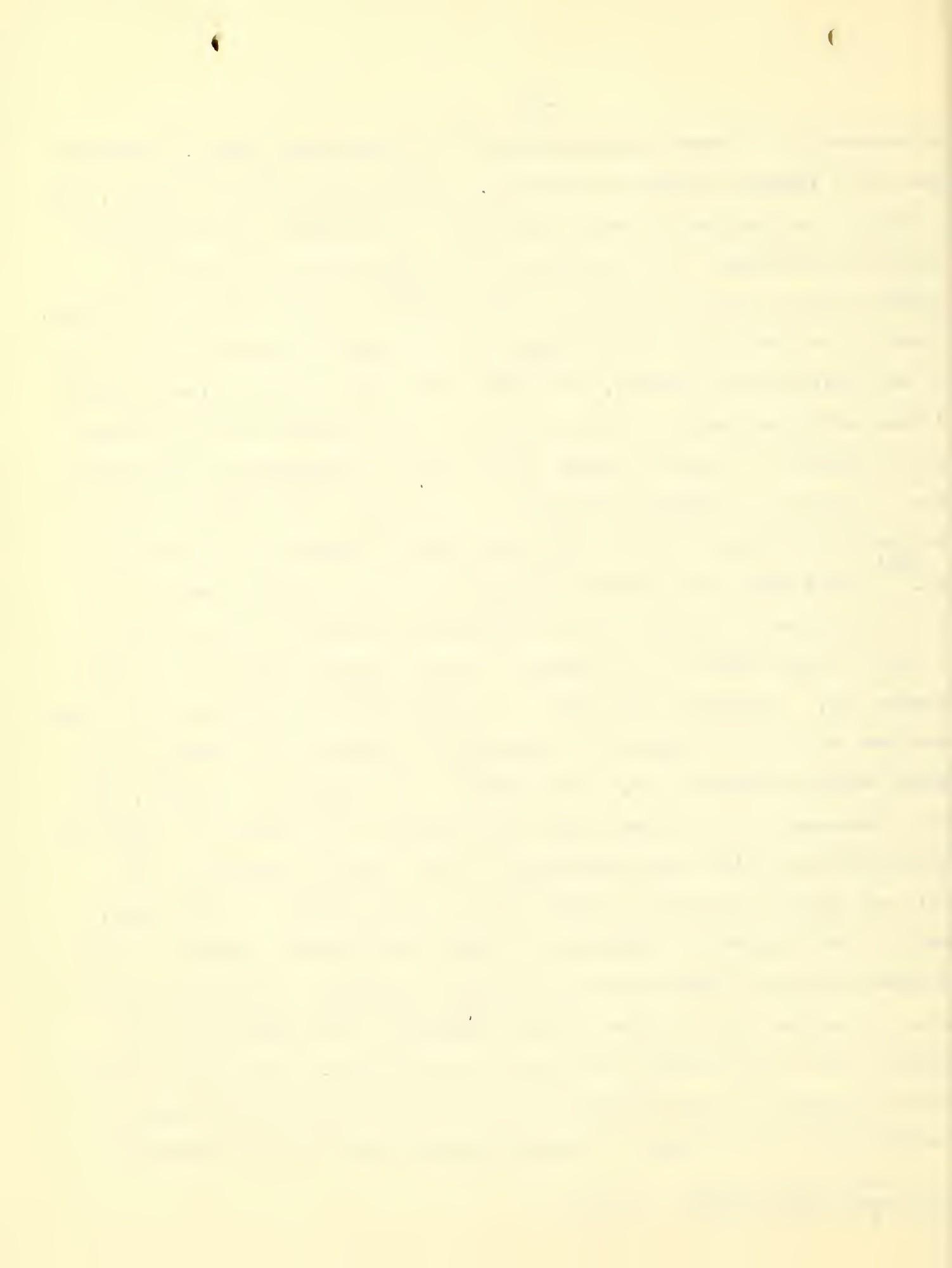
afterwards for improper publications." In the second place, "Liberty" was not a license to publish anything, but only what was held proper, and a writer was considered always answerable to the public and to individuals for any abuse. In like manner they maintained that liberty of speech did not permit slander, nor did liberty of action justify violence. Again it was maintained that "liberty of the press" according to the law of any state, United States, or England never did include false and malicious writings against the government, or its officers, with an intent to do mischief. A law to punish such is not an abridgment of "liberty", for it would be a manifest absurdity to say that a man's liberty was abridged by punishing him for doing that which he never had a liberty to

(2)

do. The Federalists further maintains that the Sedition Law was not unconstitutional because it made nothing penal that was not so before. It gave no new powers to the courts, but was merely declaratory of the Common Law. Writings with intent to do mischief were punishable at common law, and the act instead of extending the law and the power of the court rather abridged both. The liberty of the press, they argued, had been increased, for at common law libels against the government might be punishable with fine and imprisonment at the courts' discretion, but this act limited the fine to \$2000, and the imprisonment to two years, and it also allowed the defendant to offer the truth in evidence for his defense, which by common law was expressly forbidden. The Federalists also maintained that the law was not contrary to the constitution because it did not "abridge" the liberty of the press. The wording of the first amendment to the Constitution permitted of "no law respecting an establishment of religion, or prohibiting the free exercise thereof,"

(1) Amer. State Papers. Misc. I.

(2) " " " "



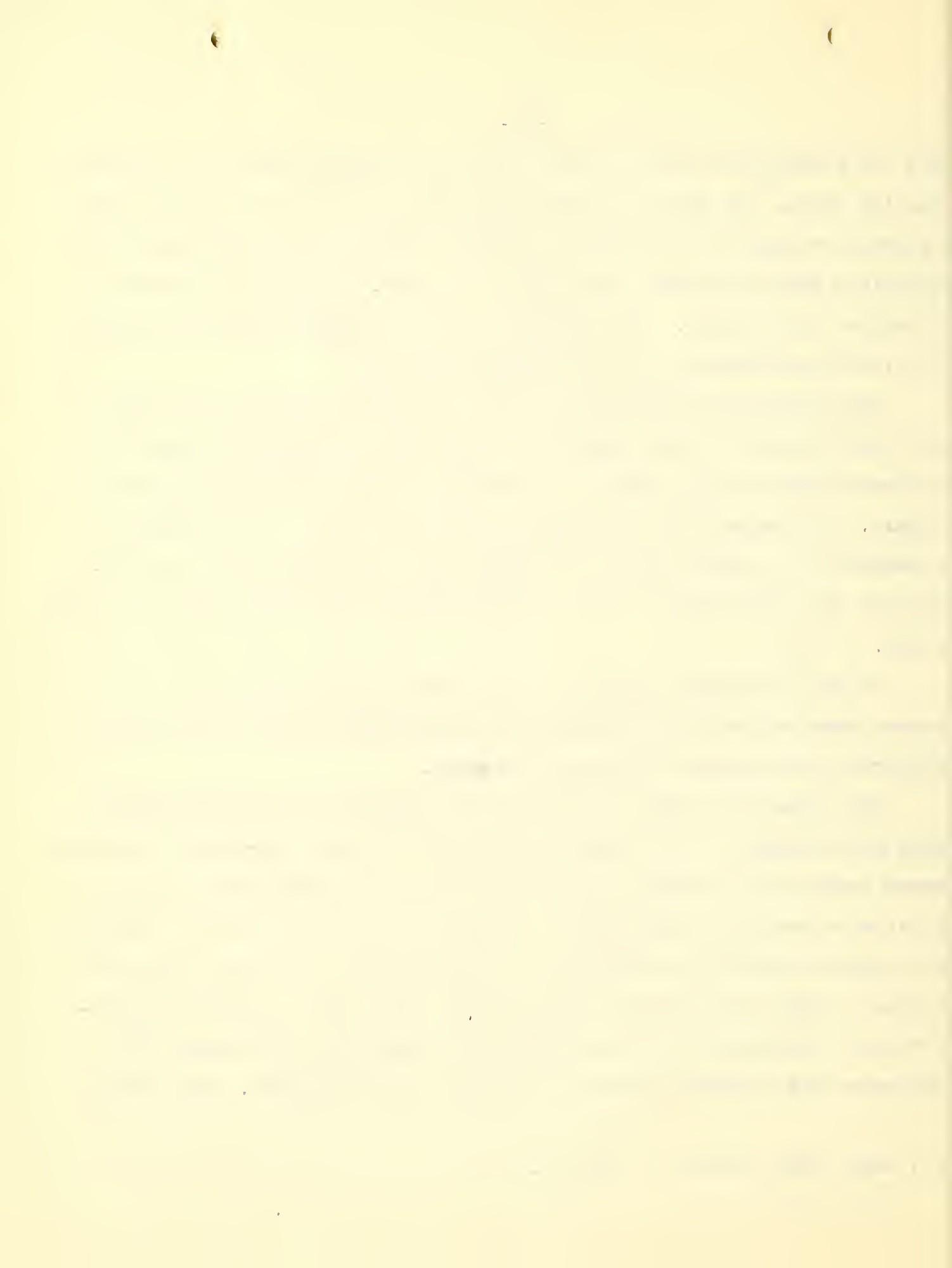
and the Federalists held that had the same intention prevailed respecting the press, the same or similar wording would have been used. But by the words used the prohibition extended only to an "abridgment", and thus laws might be passed respecting the press, provided they did not "abridge" its liberty. The Sedition Law they maintained was no abridgment,<sup>(1)</sup> and consequently was not unconstitutional.

From the foregoing discussion of the contrary views of the Alien and Sedition Laws it can readily be seen that the Republicans had the arguments which would appeal to the rank and file of the plain American people. The majority of the people could not reason on the constitutionality of a law and come to a sound legal conclusion, but the "liberty of the press" was to them a very definite thing which they did understand.

It was also quite apparent to the average person that all of the recent laws passed by the Federalists greatly strengthened the central authority and weakened the state authority.

The conception which most people had inherited from Revolutionary days with respect to the relative powers of the state and federal governments would have to change should the centralizing influences continue. In view of what was taking place a great many believed that the Federalist party--a party of aristocratic and monarchial tendencies--fully intended to undo the progress which had been made toward equality and individual liberty and to create within this country a government with extensive and arbitrary powers not unlike that of England. The differ-

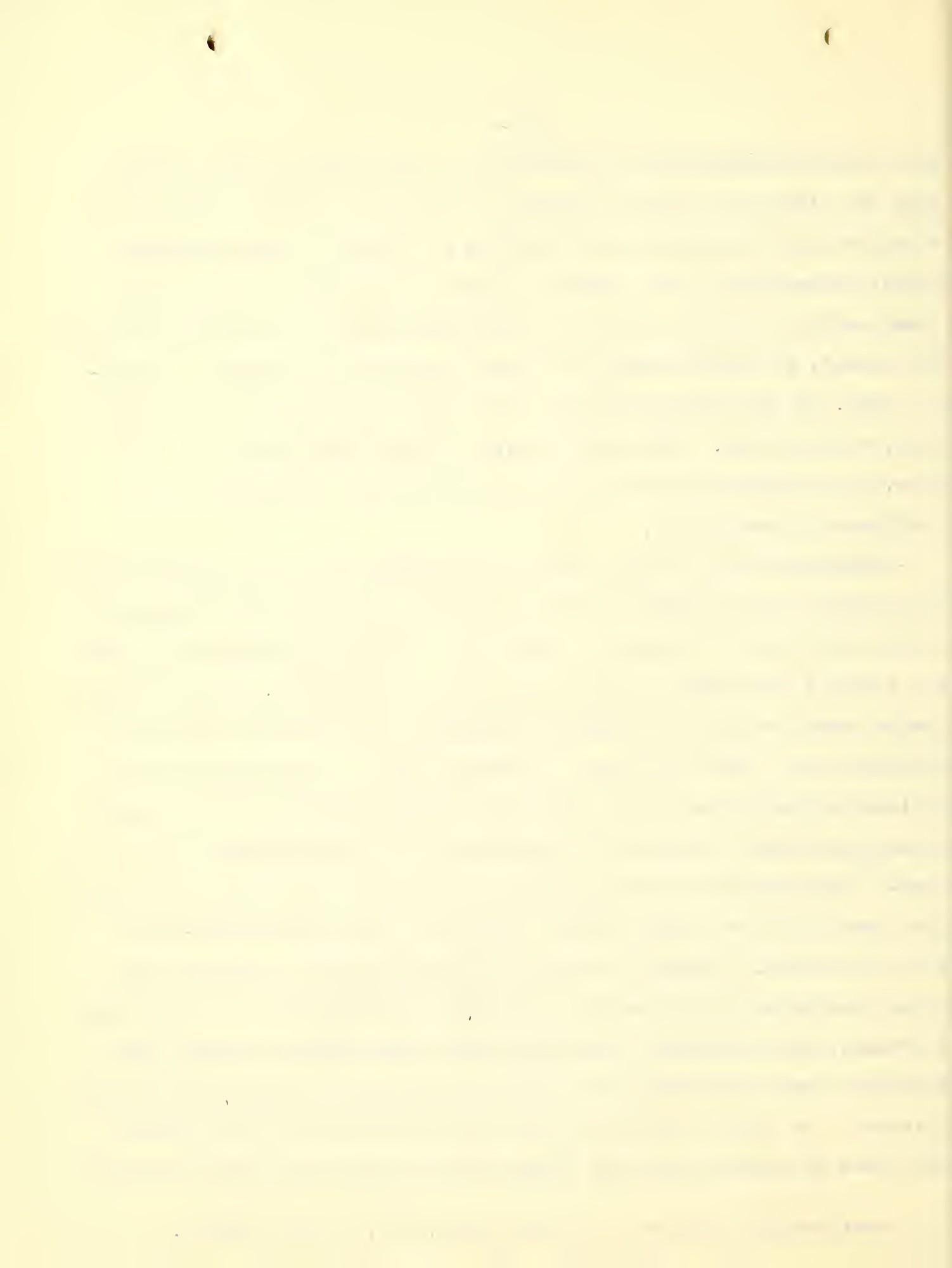
(1) Amer. State Papers. Misc. I.



ence between Republicans and Federalism to them was no less a matter than the difference between progress and reaction, between what France stood for and what England was fighting to prevent. And this fundamental conception is the paramount factor in nearly all of the political activity of the period. To the Republicans it was "the liberty of the press"; to the Federalist the same press was licentious. A standing army, and an increased navy to one side was a threat; to the other side, a protection. Democracy was in a transitional stage, not only here, but in England and France as well, and as a result men lacked confidence in each other.

Misapprehension of the intent of the Federalists was increased when men compared the activity of their party with the reactionary measures of the Tory party in England. There was a striking parallel--both parties seemed to be aiming at the same thing. In November, 1795, a Treasonable Practices Bill was passed; likewise the same month a Seditious Meetings Bill. Both bills were passed in spite of remonstrances from Parliament members and large classes of people outside, but the higher classes generally supported the government in these repressive measures. Meetings were likewise held protesting that the bills struck at the liberty of the press, and the freedom of public discussion--but with no results. During this period the regulation of newspapers was often considered by Parliament: the stamp and advertisement duties were increased, more stringent provisions were made against unstamped publications, and securities were taken for securing the responsibility of printers. In April, 1799, a Corresponding Societies Bill was passed which was an extreme measure; suppressing societies which did not have a

(1) Constitutional History of England--May. Vol. II pp. 164-169.



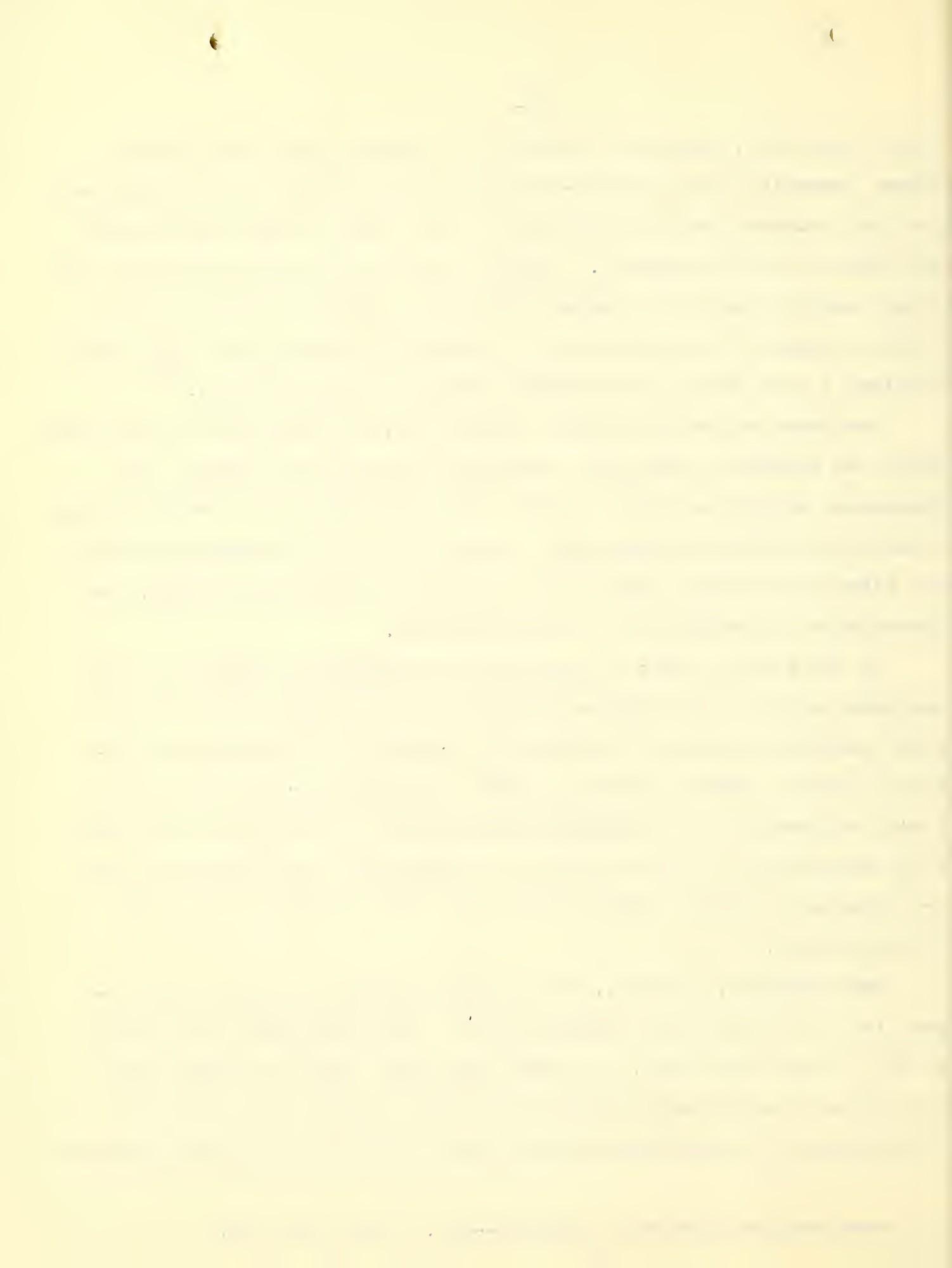
proper publicity, requiring licenses for debating clubs and reading rooms; demanding that printing-presses and type-foundries be registered, and that printers print their names on every book or paper and register the names of their employers. Measures such as these were alarming, and would doubtless have been resisted had not a portion of the press and certain classes of society committed outrages on decency and order which inspired a sort of fear of democracy among the better classes.<sup>(1)</sup>

Americans who watched these things go on, and reflected on the course which the Federalist party was following were coming to believe that democratic principles were at stake, that the people of the United States required no arbitrary government to keep them on good behavior, and that the Alien and Sedition Laws were an exercise of power unnecessary, unjustifiable and dangerous to American Liberty.

Of the various means of organizing, increasing, or spreading this sentiment against the Alien and Sedition Laws the three most effective were: publicity by means of petitions, pamphlets, and newspapers; winning of public sympathy through several conspicuous trials; and an official announcement of the Republican attitude in the Virginia and Kentucky Resolutions. Either directly or indirectly, the Republicans under Jefferson's guiding mind and hand were able to utilize these with telling effect.

The newspaper, pamphlet, and petition served to promote local opposition to the Alien and Sedition Acts. Nearly everybody was reached by one of the three means. To these were added public meetings, which were properly advertised in Republican papers, such as the Aurora of Philadelphia, and Republicans Watch Tower of New York, and their proceed-

(1) Constitutional History of England--May. Vol. II p. 169.



ings later noted. When the Acts were first passed petitions against them were in abundance; but the summer of 1799 and winter of 1800 produced a lull. These petitions were usually drawn up in the various counties, and presented to Congress as a remonstrance against the Alien and Sedition Acts, standing armies, stamp act, etc. As an example of the extent to which this means was used by the Republicans to organize sentiment against the Alien and Sedition Laws, a list of some of the petitions laid before Congress during the winter of 1799 is here given:

Cumberland County, Penn. presented a petition with 270 signers.

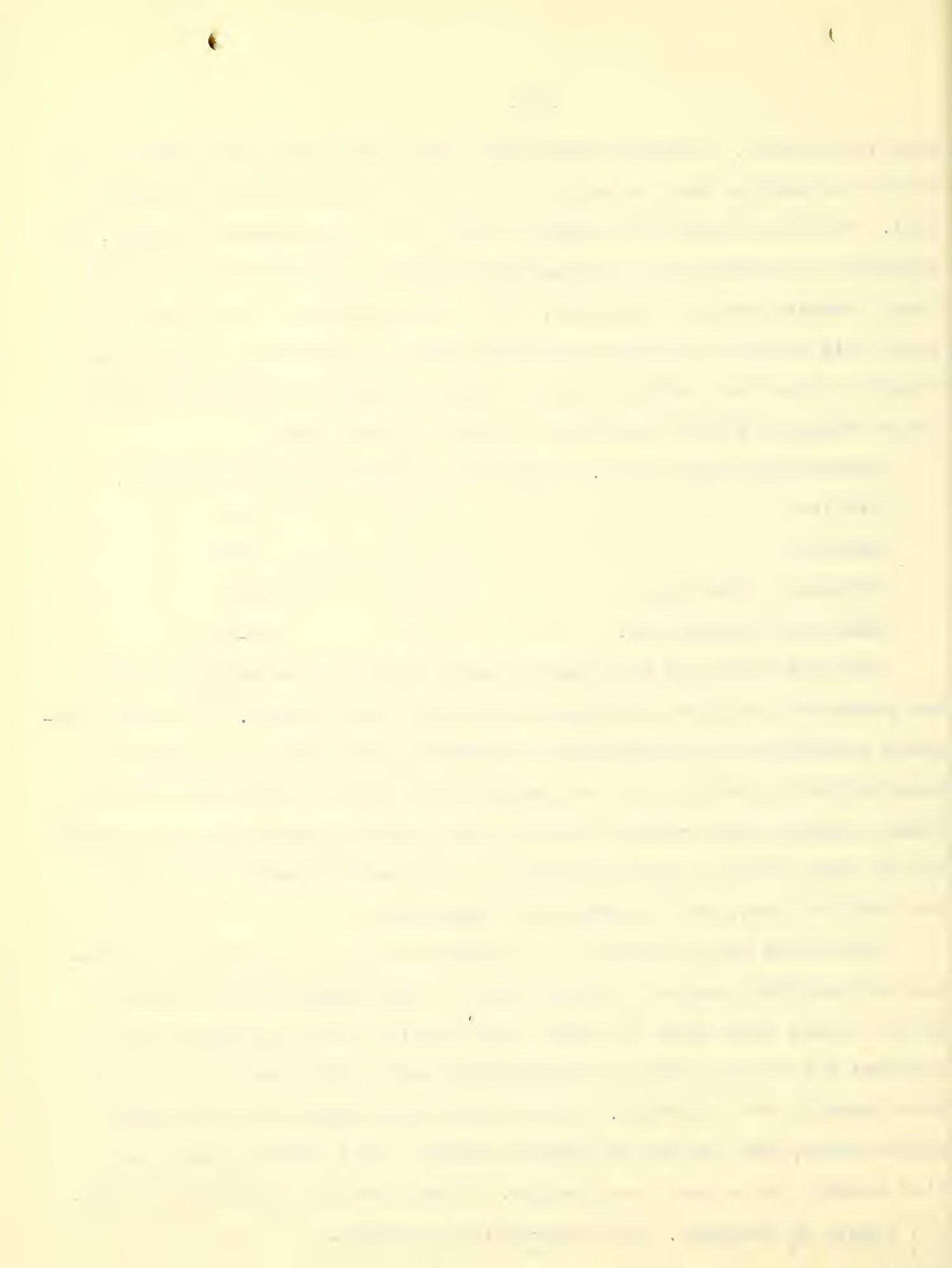
Mifflin	"	"	"	"	"	"	314	"
Chester	"	"	"	"	"	"	692	"
Citizens of New York			"	"	"	"	3500	"
Newcastle County, Del.			"	"	"	"	700-800	"

Callatin stated in the House at this time that Pennsylvania alone  
(1) had presented petitions bearing in all about 18,000 names. In fact, congress considered the advisability of repealing the Alien and Sedition Laws during this winter, but on February 25, 1799, a committee of the  
(2) House reported unfavorably on such action, and the repeal was voted down. All of this served to give publicity to the feeling against the Alien and Sedition Laws, and to spread the discontent.

The second means utilized by the Republicans to encourage anti-Federalist sentiment was made possible by the unfortunate effect produced by the trials held under the Laws. The trials were so conducted that it required but little effort for Republican writers and speakers to stimulate sympathy for the tried. Prosecutions were made out as legalized persecutions, and the cry of "packed juries" and a partisan bench carried weight with a great many people. There were ten printers and edit-

(1) Annals of Congress. 5th Congress; 3rd session.

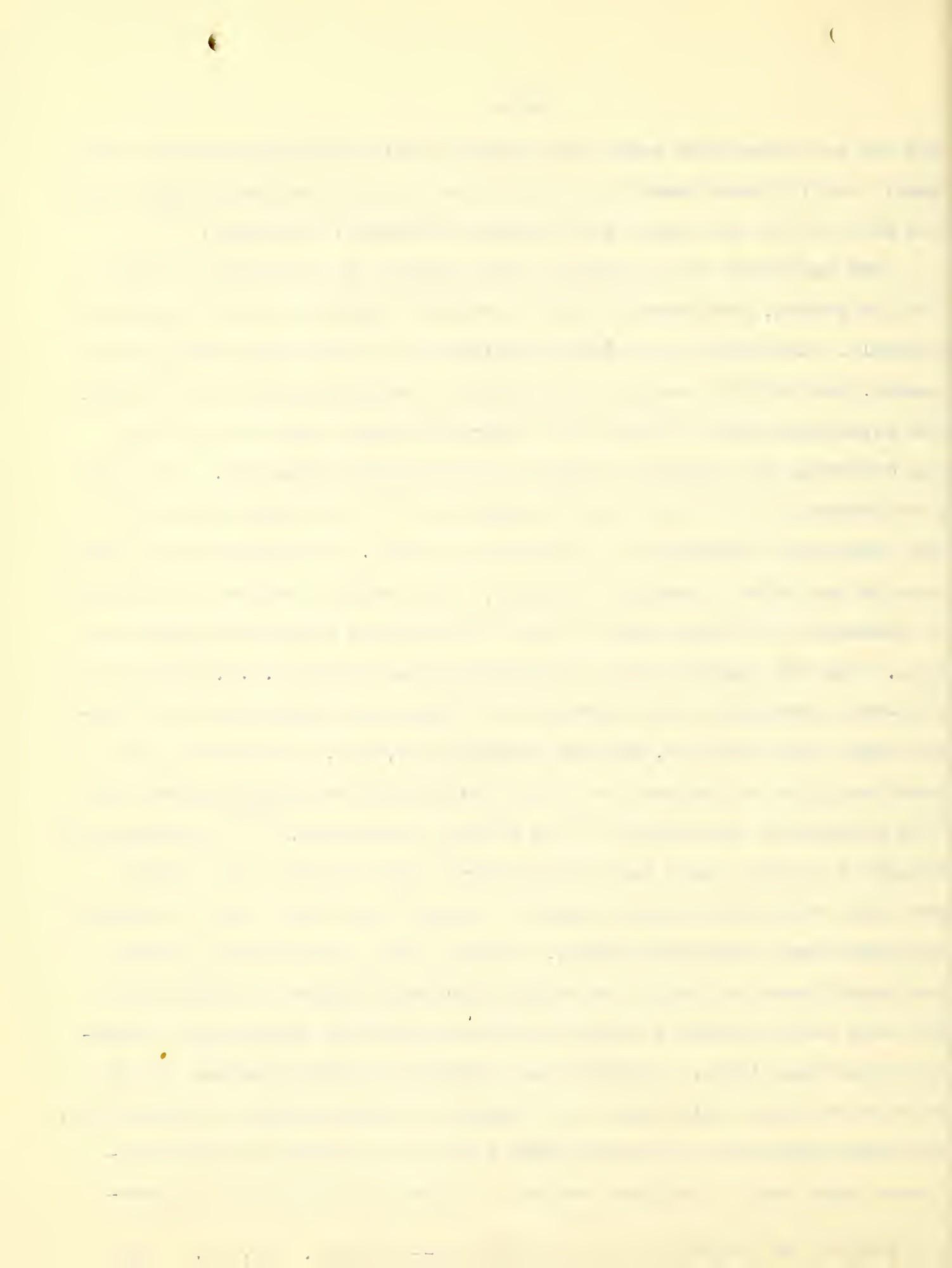
(2) " " " " "



ors who were convicted under the Sedition Law: Mathew Lyon stood at the head; then followed Haswell of the Vermont Gazette; Baldwin; Frothingham (1) and Holt of the New London Bee; Cooper; Callendar; and Duane.

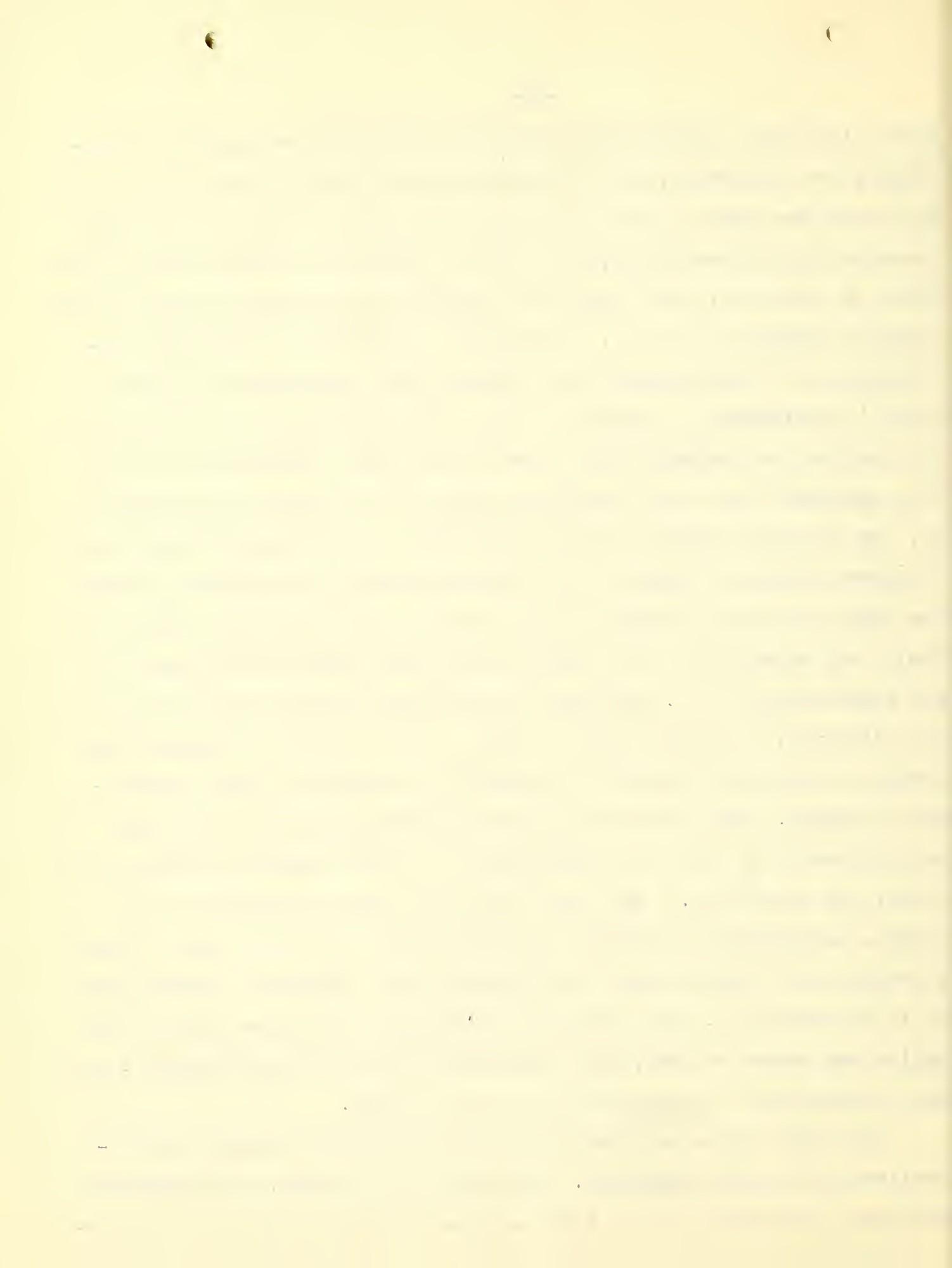
The Callendar case affords a good example of the manner in which the Law worked, and reveals also the exicted condition of the people as a result. Callendar was a "fine specimen of a Grub-Street hack," the reward, and not the content, of an article being uppermost in his mind. The Republicans were in need of a strong partisan paper in Virginia, and Callendar was placed in charge of the Richmond Examiner. The paper soon became to the South what the Aurora was to the middle states and the Independent Chronicle to the eastern states. But before this chance came he published a pamphlet entitled, "The Prospect before us" in which he presented in strong terms a list of grievances against the Federalists. The ten chapters were a violent protest of the X.Y.Z. affair, the Fast-day ceremonies; the prosecution of Bache, the increase in the public debt, the Alien Act, and the Sedition Act, etc. The theme of the work was given in the preface as the "misconduct of the President" and "the multiplied corruptions of the Federal government." Callendar was brought to trial, and a few of his remarks were put into the indictment upon which the case was based. The case developed great excitement because Chase, the circuit judge, had said that he intended to humble the Republicans and bring the haughty Virginia lawyers to submission. The case really became a contest between Republican lawyers and a fearless, partisan judge. Callender was defended by three lawyers one of whom later became well known as a federal Attorney-General, William Wirt. The case opened with the usual pleas for time in which to obtain witnesses upon whom the defense relied to prove the truth of the defend-

(1) History of the People of United States--McMaster. Vol. II. p. 467



ant's statements. There was no doubt that Callender was guilty of publishing the statements, and as the defense had little to say on the facts an attempt was made to argue the constitutionality of the Sedition Law. Chase cut the defense short, and told the defendant's lawyers not to reflect on the Court, which alone was endowed with authority to pass on the constitutionality of an act. As the jury passed only on the facts according to the law Callender was convicted, and sentenced to a nine months' imprisonment, required to pay a fine of \$200, and to give security for his good behavior for a term of two years. There was no doubt that Callender was a most malignant writer, and a poor sort of character, and possibly deserving of his punishment. The Independent Chronicle of Boston printed an extract of a letter received from Richmond, where the trial was held, and dated May 28, 1800. In it the writer said: "The lenity and moderation of the judge in this particular (which were felt and acknowledged by Mr. Callender himself) resulted from inquiry, and were dictated, we presume, by a regard to his pecuniary circumstances." Again, in the same extract: "the grand jury consisted of most respectable citizens, from different and remote quarters of the state; and were addressed by the Hon. Judge Chase in a style equally pleasing, pertinent, and impressive." But the convictions, and the severity of the judges, nevertheless, convinced the Republicans and others that the Sedition Law was a bad law, and the support of the people was readily gained in denouncing it. The strenuous enforcement of the law during this spring and summer of 1800, just preceding the Presidential election, was most untimely for the Federalists on this account.

The third factor employed by the Republicans in opposing the Federalists was a party manifesto. The Republican leaders, and especially Jefferson, believed that the time had come for such action, and the Vir-



ginia and Kentucky Resolutions were the result. They had seen the Federalists gradually centralize authority in the government; they had felt the force of tax laws passed to maintain a standing army, and an enlarged fleet; they saw the Federalists in the height of glory and power backed by an excited and war-mad people; they had just seen three laws enacted which gave the government wide powers over the individual and which they believed were not warranted by any grant of power to the national government.

(1) The Federalists had overstepped the bounds of discretion, and a rare political opportunity presented itself to the Republicans. On December 24, 1798, from the Virginia legislature, and on November 10 from the Kentucky legislature the "principles" of the Republican party were proclaimed in the form of resolutions. The source of both resolutions was the same, though Madison was responsible for those adopted by Virginia, and Jefferson for those adopted by Kentucky. This fact attached to the resolutions an added significance, for Madison's prominence in connection with the drawing up of the Constitution gave great weight to his interpretation, and Jefferson was the recognized leader and oracle of the Republican party.

Of the two, the Virginia Resolutions are milder and more indefinite in language--a fact due possibly to the character of the men who drew them up, and possibly out of consideration for the temperament of the people who were to pass on them. The Virginia Resolutions went so far as to declare that the federal government was limited in its exercise of power to the enumerated grants of the Constitution, and should the government exceed those granted powers it became the duty of the states to "interpose". The Kentucky Resolutions, however, were more definite.

(1) The Federalist System--Bassett. p. 265.

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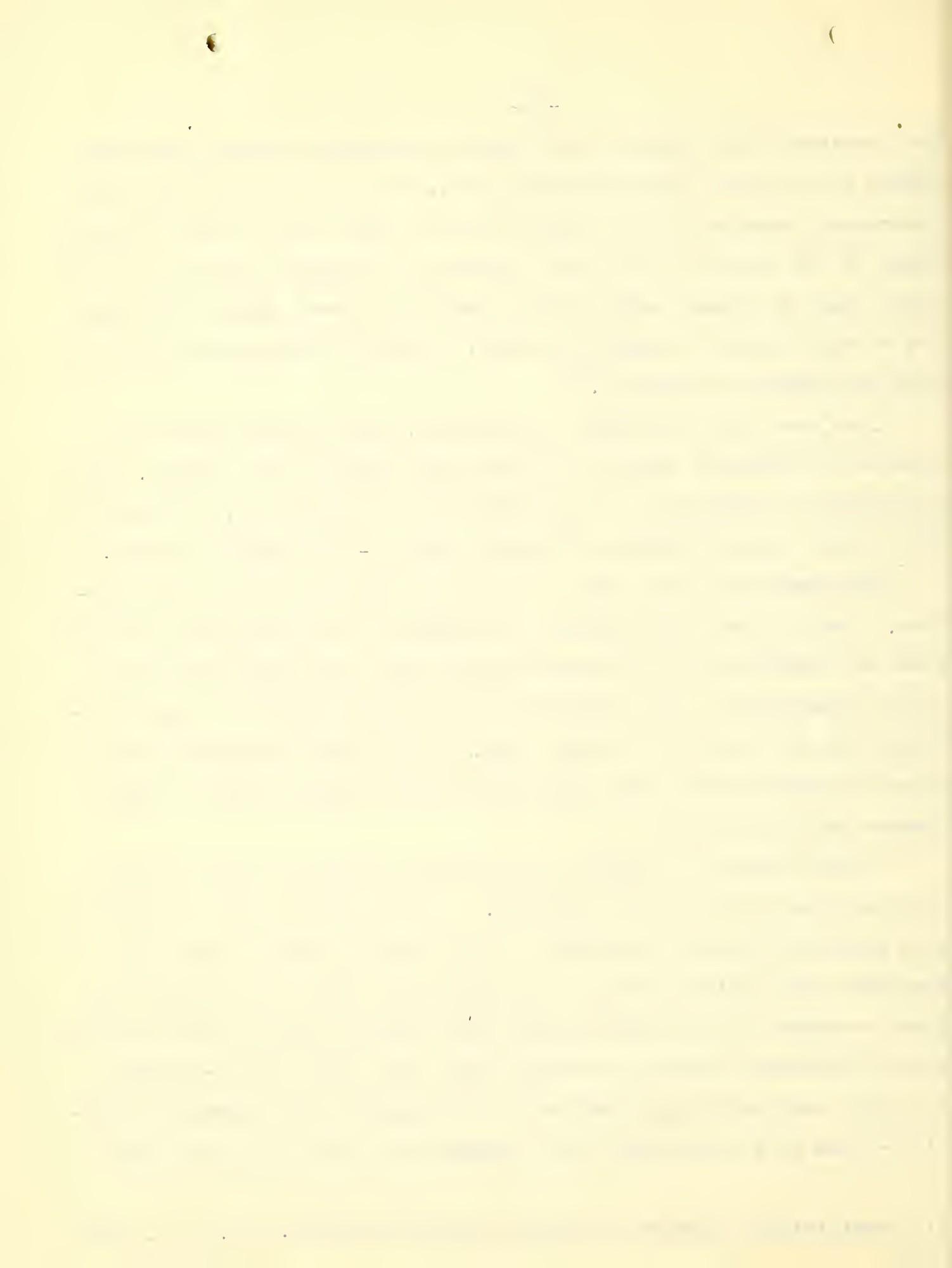
They declared "that whenever the general government assumes undelegated powers its acts are unauthorized, void, and of no force;" "that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself"; "that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress".<sup>(1)</sup>

Thus were the "principles" established, and it only remained to provide the method by which the states might enforce their rights. The legislature of Kentucky, in its resolutions of November 14, 1799 provided for that want by declaring "nullification----the rightful remedy".

The Resolutions were sent to the other states for their consideration. The northern states upheld the legality of the Alien and Sedition Laws, and declared that the Federal Courts were the legal interpreters of the Constitution. The Southern states made no replies. A great commotion had been created in public life, for the State legislature had given the Resolutions a wide publicity, and the earnest work of local leaders kept this alive.

It now remains to consider the political effect of the Alien and Sedition Acts in the election of 1800. As the election drew near it became apparent that the objections to the Alien and Sedition Acts had been made with telling effects. The contention that they violated the first amendment of the Constitution; that Congress had exceeded its authority for partisan reasons in passing them; that they were un-American in spirit and tradition, reactionary and suggestive of monarchial authority--these were contentions that a population, still quite rural in

(1) Constitutional History of United States--Von Holst. Vol. I. p. 146.

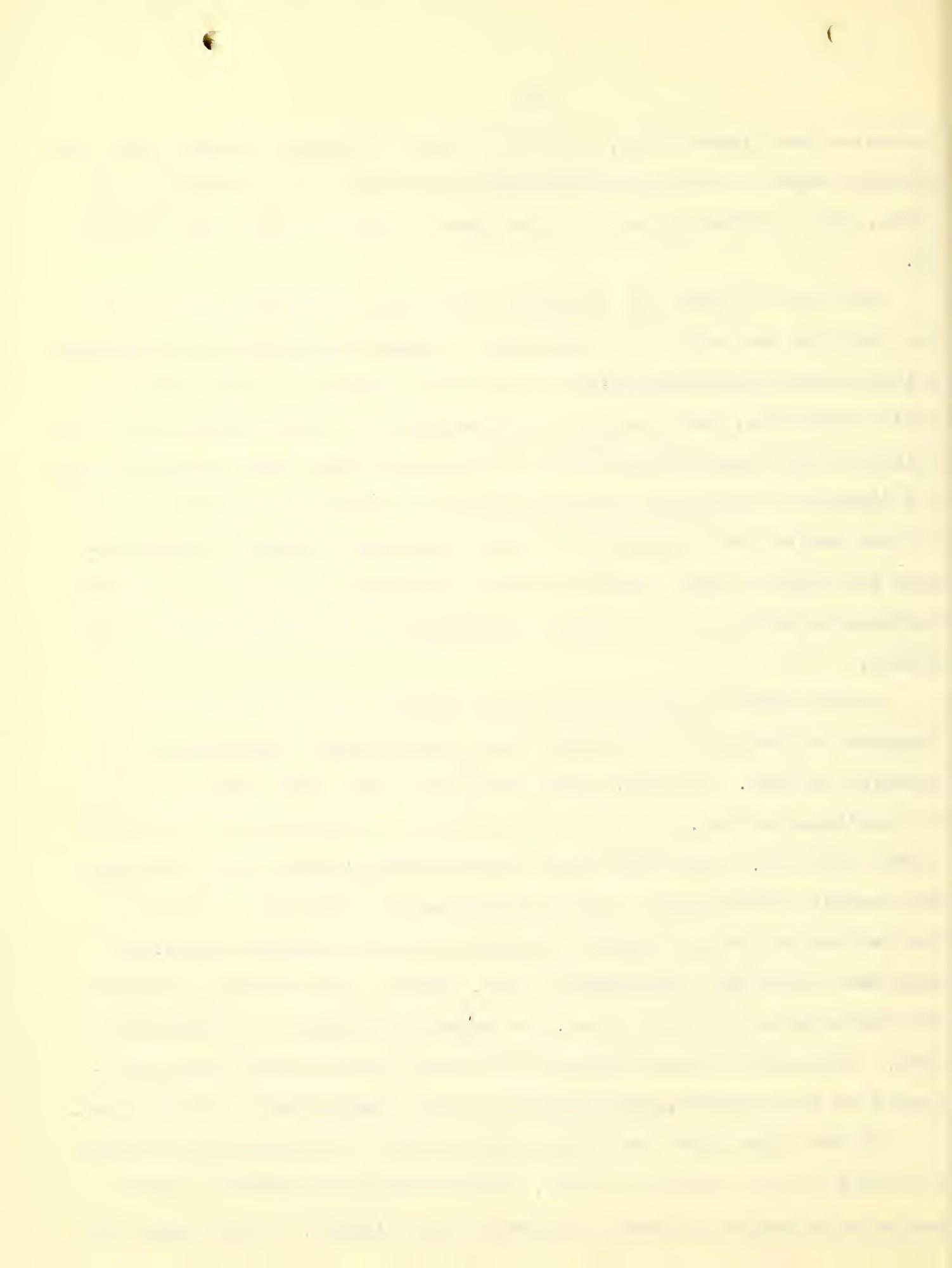


character and disposition, was quite ready to believe as true. The people were sure to turn to the defenders of freedom of speech and of the press, and to oppose those who threatened the same by any abuse of power.

And then it must have appeared true that a permanent enforcement of the Sedition Law would have destroyed a fundamental element in representative and party government--the right of the people to criticise their public officials, and thus hold them responsible. The Sedition Law made this and party opposition illegal. The Zenger libel case had established the "liberty of opposing arbitrary power by speaking and writing truth". By thus basing their objections on constitutional grounds the Republicans were able to make out of the Alien and Sedition Laws most excellent campaign material, and it greatly strengthened their position with the voters.

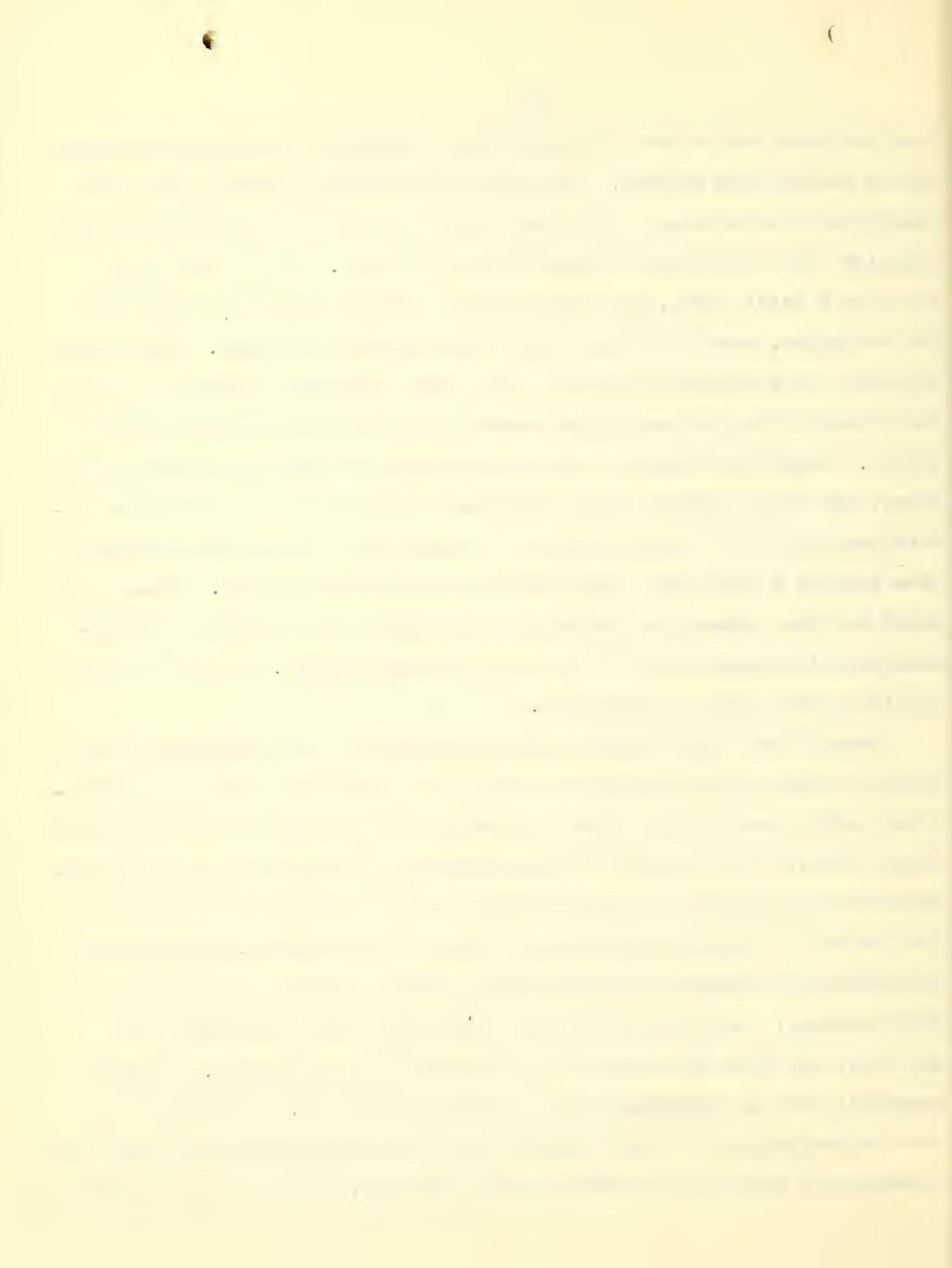
In the second place the Alien and Sedition Acts called forth the Virginia and Kentucky Resolution which exerted great influence on the election of 1800. In 1831, Madison declared that these Resolutions were for political effect, and were not intended as expositions of constitutional doctrine. And herein lies the real significance of the Virginia and Kentucky Resolutions. Their appearance was timed just right; for they voiced not only a popular protest of two objectionable laws, but they made those two objectionable laws, and the consolidating tendencies of Federalism which backed them, the paramount issue in the campaign of 1800. Here was an issue entirely free from French associations, democratic in its tendency, and appealing to the consciousness of every man.

In the third place the Alien and Sedition Laws exerted a very great influence on the election of 1800, because their enforcement kept the people in a continual state of agitation and disgust. Trials under the



Laws followed each other with sufficient frequency to prevent the temper of the people from cooling. One or two convictions, obtained even with considerable unfairness, would have been of but little importance in the campaign talk of an election such as that of 1800. But a trial here, and soon a trial there, and then another, each creating local interest and prejudice, made all told a very considerable impression. But not only that; the Federalists made the very grave political mistake of pressing trials during the spring and summer of 1800, just preceding the election. Republican leaders took good advantage of this condition of affairs, and their speakers made political capital out of the continued invitations which the Laws produced. In these ways the Alien and Sedition Laws exerted a very great influence on the election of 1800. Alone they might not have caused the Federalist down-fall, but a series of circumstances and changes gave to them most powerful support, and made the Republican party quite irresistible.

Among these other factors which contributed to the Federalist down-fall, the most distressing was the lack of co-operation within the Federalist party itself, due to the ill feeling which Hamilton personally bore toward Adams. The election of 1796 revealed the rupture between the two, which was so widened by Adams' handling of the French situation, that on the eve of the campaign there came a break in the Cabinet, followed not long after by an article by Hamilton in which he sharply criticised Adams' whole conduct. Anything of the sort would have been unfortunate at any time, but this happened at the beginning of the campaign. Hamilton remarked: "for my individual part, my mind is made up. I will never more be responsible for him (Adams) by my direct support, even though the consequences should be the election of Jefferson." The loss of Hamilton's

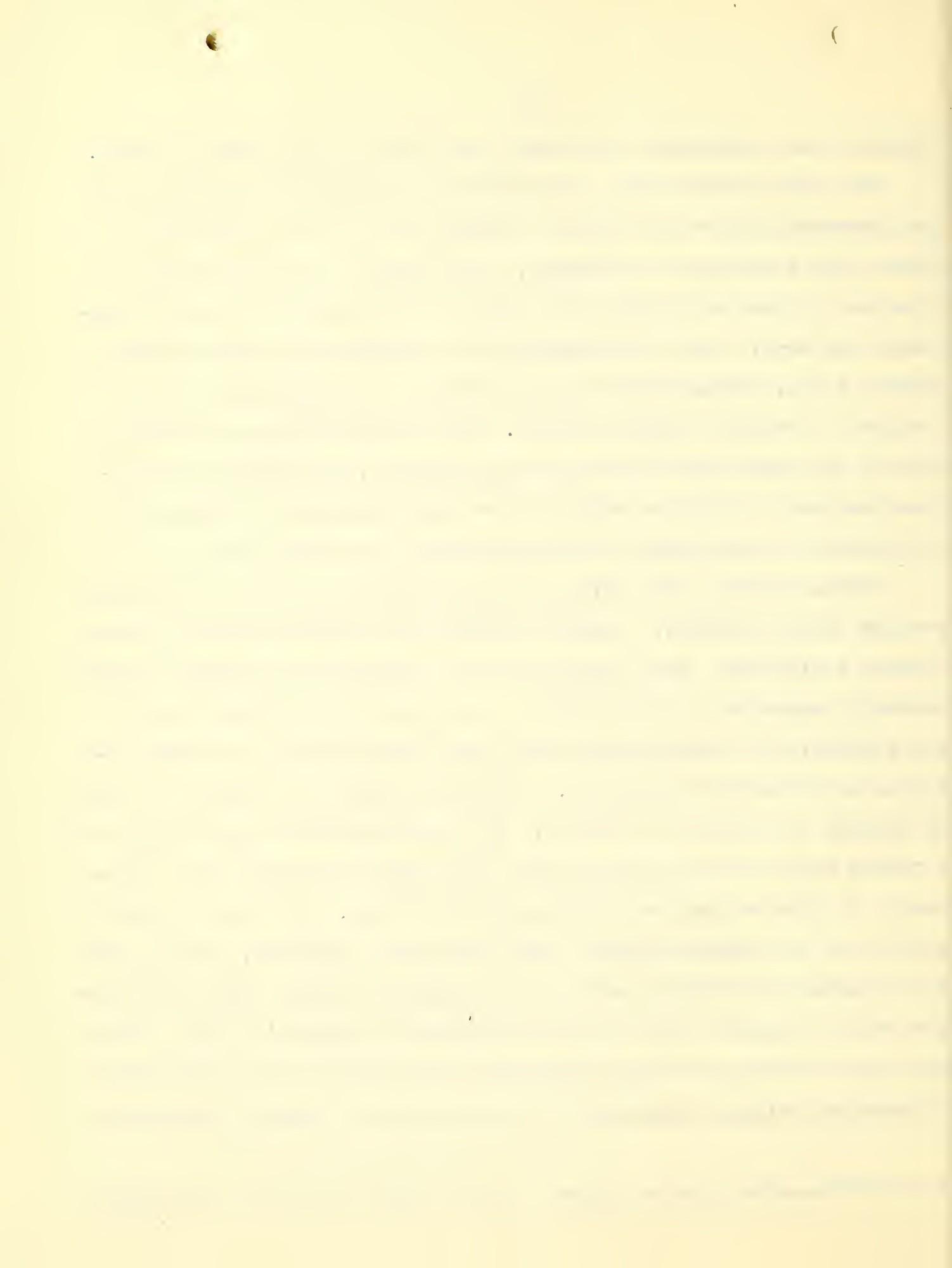


influence was unfortunate for Adams, especially in the crisis of 1800.

The second factor which strengthened the Republican position was the increasing desire for peace. Reports from the new commission to France were favorable; in February, 1800, Congress had authorized the President to suspend enlistments; and in March a law was passed to discharge the army. For the Federalists the campaign was robbed of that warlike front, behind which they had found it so profitable to take shelter. A natural reaction set in. Men had been living in constant fear of war, work had been left for the purpose, and business had become disturbed. They now welcomed the bright prospects of peace, but they failed to give Adams or the Federalists any credit for it.

Another factor which helped the Republicans cause was the growing feeling against England. Several incidents had happened which were extremely irritating. The commission set up under the Jay Treaty had been suddenly suspended in 1799, after it was learned that England granted about \$5000,000 in spoliation claims, but had totalled up American indebtedness to about \$19,000,000. Jonathan Robbins was arrested in 1799 by England on a charge of treason. He claimed American citizenship, but a United States court decided against him, and he was released to England. In 1798 an American warship, the Baltimore, was stopped, and fifty-five of her sailors seized. Fifty were later returned, and the act was disavowed by England, but such an adjustment could hardly atone for the lack of respect which had been displayed on England's part. Incidents such as these, and her disagreeable insistence on the impressment of American sailors prejudiced the people against England, and against

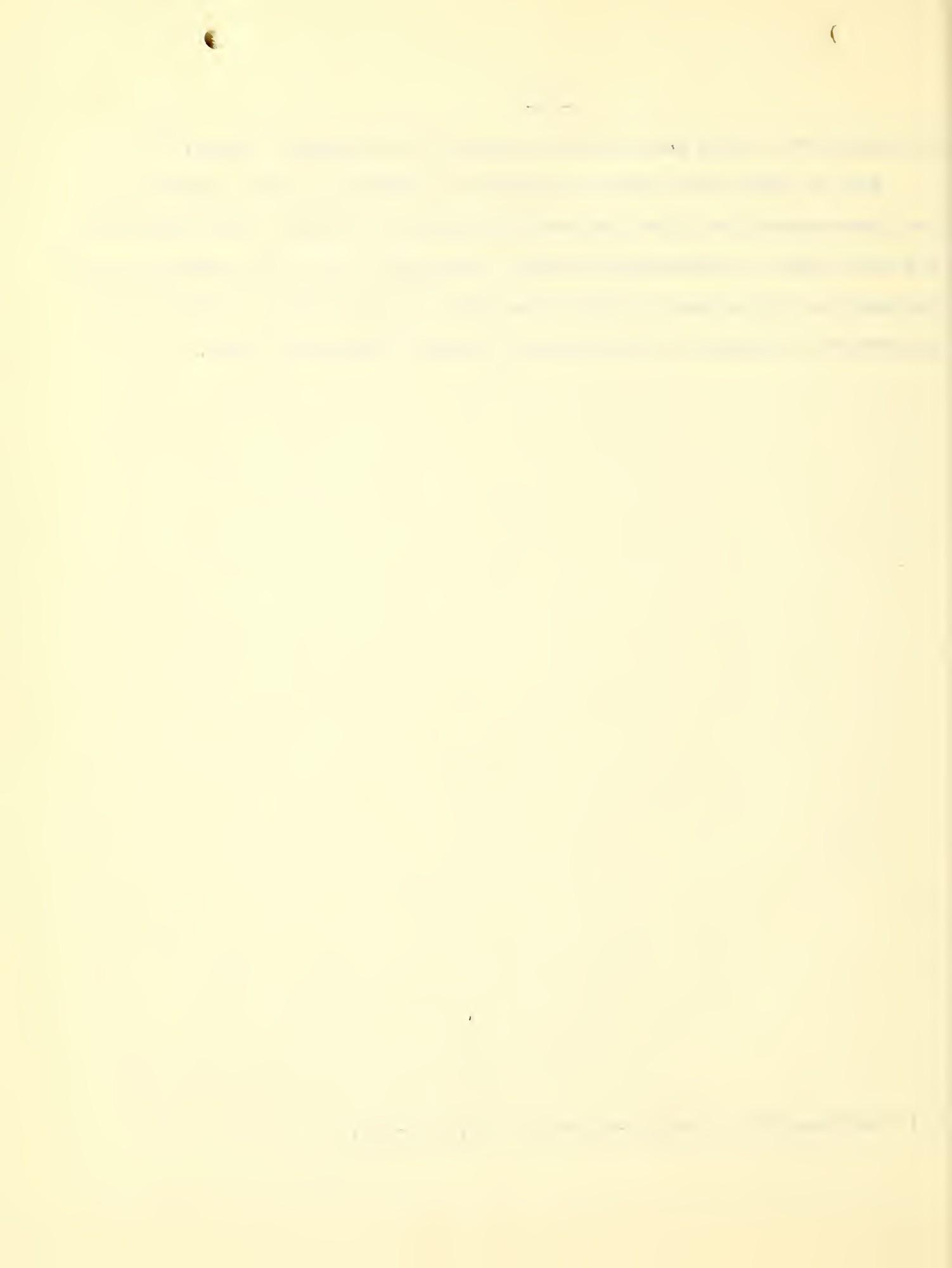
(1) The Federalist System--Bassett (Quoted from the Works of Hamilton)  
p. 286.



the party which they believed had played into England's hands.

All of these influences conspired to render the more significant the issue which the Alien and Sedition Laws had raised. The opposition was more than the Federalists could withstand, and in the election which followed in the autumn of 1800 a majority of the voters entrusted the government to Thomas Jefferson and his Republican associates.

(1) The Federalist System--Bassett. pp. 280-283.



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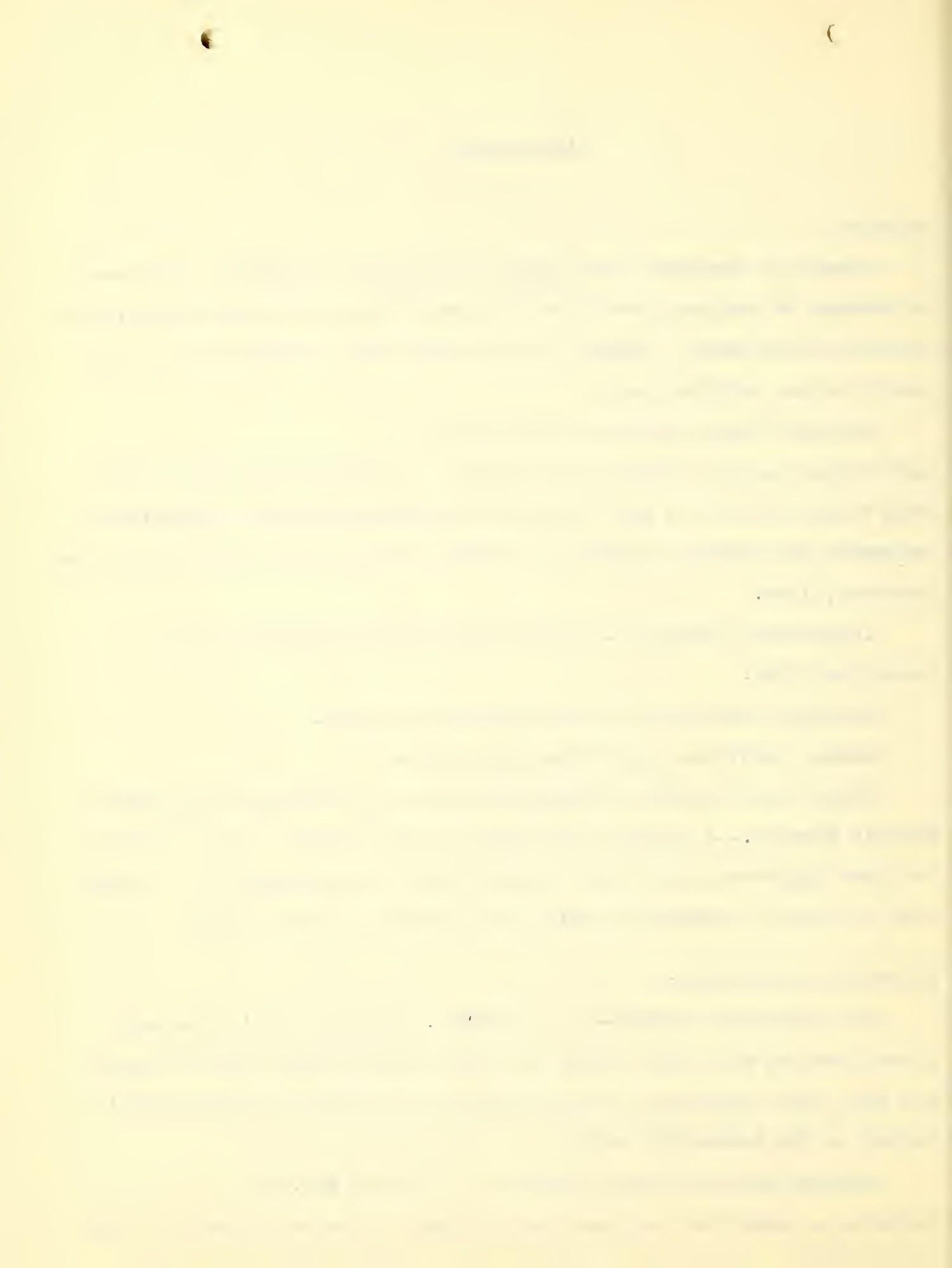
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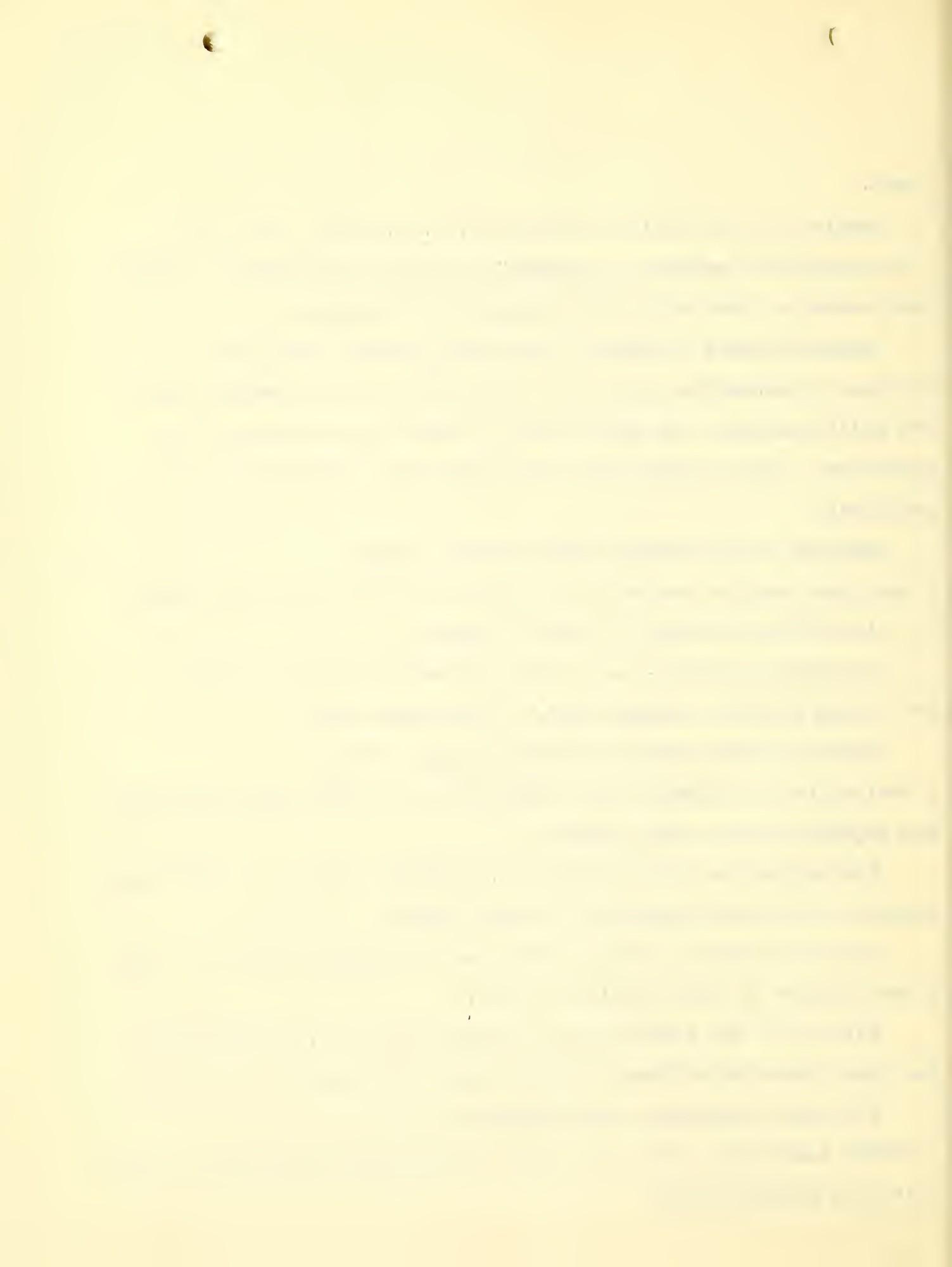
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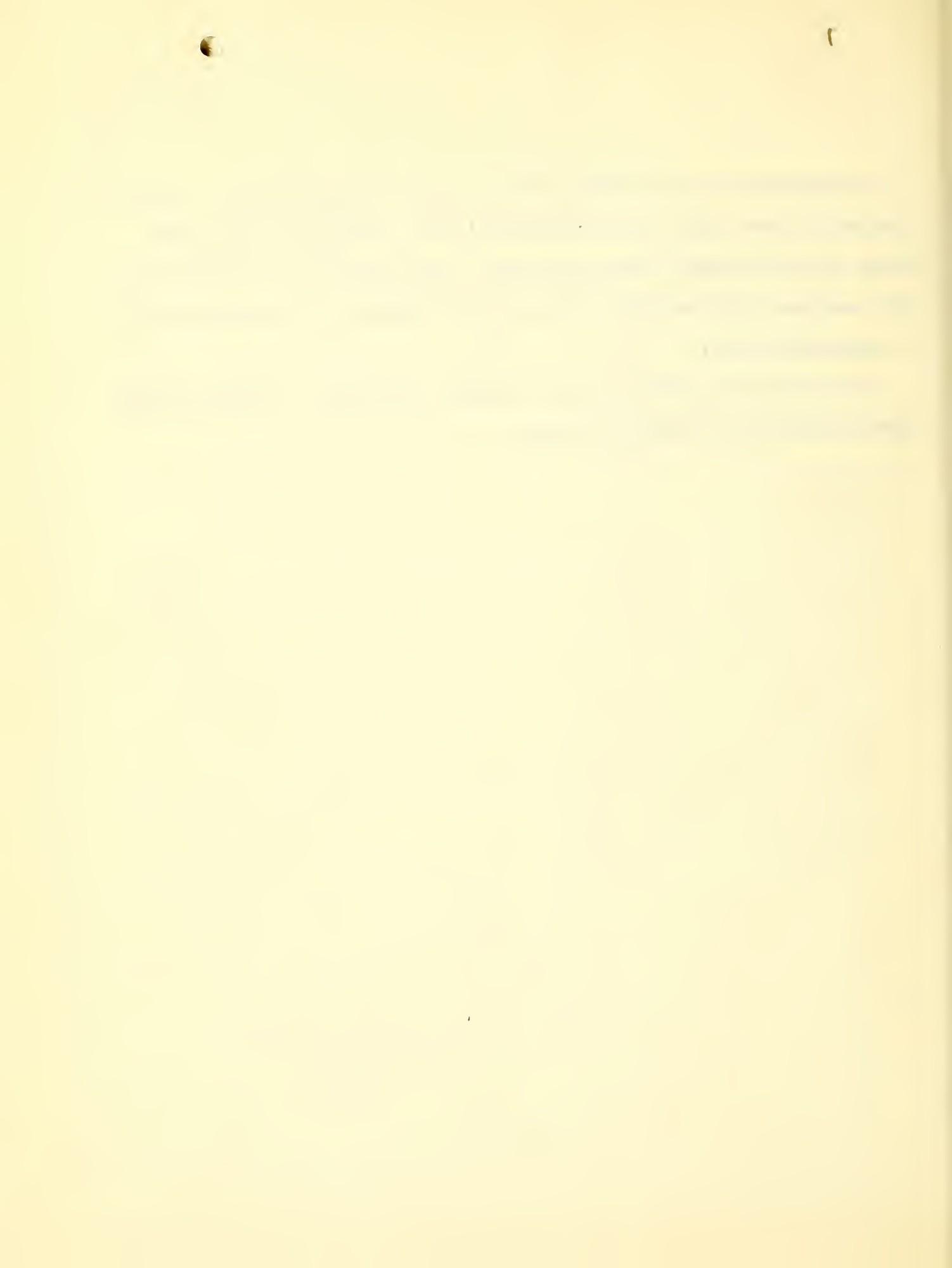
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